Supreme Court, U.S.
FILED
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No. 14-1458

IN THE

# Supreme Court of the United States

MHN GOVERNMENT SERVICES, INC., AND MANAGED HEALTH NETWORK, INC.,

*Petitioners,*

v.

THOMAS ZABOROWSKI, ET AL.,

*Respondents.*

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

## JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JUNE 10, 2015
CERTIORARI GRANTED OCTOBER 1, 2015

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General Docket

United States Court of Appeals for the Ninth Circuit

THOMAS ZABOROWSKI; VANESSA BALDINI; KIM DALE; NANCY PADDOCK; MARIA HOWARD; TIM PLATT, on behalf of themselves and all others similarly situated,

Plaintiffs - Appellees,

v.

MHN GOVERNMENT SERVICES, INC.; MANAGED HEALTH NETWORK, INC.,

Defendants - Appellants.

**Court of Appeals Docket #:**
13-15671
**Nature of Suit:**
3710 Fair Labor Standards Act
Thomas Zaborowski, et al v. MHN Government Svcs, et al
**Appeal From:**
U.S. District Court for Northern California, San Francisco

**Docketed:** 04/09/2013
**Termed:** 12/17/2014
**Fee Status:** Paid

| Date | No. | Proceedings |
|---|---|---|
| 08/16/2013 | 10 | Submitted (ECF) Opening Brief and excerpts of record for review. Submitted by Appellants MHN Government Services, Inc. and Managed Health Network, Inc. Date of service: 08/16/2013. [8746710] (TJL) [Entered: 08/16/2013 03:59 PM] |
| 08/21/2013 | 15 | Filed Appellants MHN Government Services, Inc. and Managed Health Network, Inc. paper copies of excerpts of record [10] in 3 volume(s). [8753628] (GV) [Entered: 08/22/2013 07:41 PM] |
| 09/13/2013 | 19 | Filed (ECF) Appellees Vanessa Baldini, Kim Dale, Maria Howard, Nancy Paddock, Tim Platt and Thomas Zaborowski Motion to dismiss the case. Date of service: 09/13/2013. [8782534] (JCS) [Entered: 09/13/2013 10:29 PM] |
| 10/03/2013 | 22 | Filed (ECF) Appellants MHN Government Services, Inc. and Managed Health Network, Inc. response |

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| | | opposing motion (motion to dismiss the case). Date of service: 10/03/2013. [8808944] (TJL) [Entered: 10/03/2013 04:44 PM] |
| 10/11/2013 | 23 | Filed (ECF) Appellees Vanessa Baldini, Kim Dale, Maria Howard, Nancy Paddock, Tim Platt and Thomas Zaborowski reply to response (motion to dismiss the case). Date of service: 10/11/2013. [8818988] (ARV) [Entered: 10/11/2013 01:08 PM] |
| 03/18/2014 | 27 | Filed order (Appellate Commissioner): Appellees' motion to dismiss this appeal based on collateral estoppel is denied without prejudice to renewing the arguments in the answering brief. Cf. Nat'l Indus. v. Republic Nat'l Life Ins. Co., 677 F.2d 1258, 1262 (9th Cir. 1982) (stating that merits panel may consider appellate jurisdiction despite earlier denial of motion to dismiss). The opening brief has been filed. The answering brief is due 30 days after the filing date of this order; and the optional reply brief is due |

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| | | within 14 days after service of the answering brief. (MOATT) [9019565] (WL) [Entered: 03/18/2014 06:55 AM] |
| 04/17/2014 | 28 | Submitted (ECF) Answering Brief and supplemental excerpts of record for review. Submitted by Appellees Vanessa Baldini, Kim Dale, Maria Howard, Nancy Paddock, Tim Platt and Thomas Zaborowski. Date of service: 04/17/2014. [9062797] (JCS) [Entered: 04/17/2014 04:07 PM] |
| 04/23/2014 | 32 | Filed Appellees' paper copies of supplemental excerpts of record [28] in 1 volume. [9071898] (TH) [Entered: 04/24/2014 04:55 PM] |
| 05/30/2014 | 34 | Submitted (ECF) Reply Brief for review. Submitted by Appellants MHN Government Services, Inc. and Managed Health Network, Inc. Date of service: 05/30/2014. [9115235] (TJL) [Entered: 05/30/2014 04:59 PM] |
| 11/03/2014 | 40 | Filed (ECF) Appellants Managed Health Network, Inc. and MHN Government Services, Inc. citation of |

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| | | supplemental authorities. Date of service: 11/03/2014. [9300067] [13-15671] (TJL) [Entered: 11/03/2014 04:13 PM] |
| 11/13/2014 | 43 | Filed (ECF) Appellees Vanessa Baldini, Kim Dale, Maria Howard, Nancy Paddock, Tim Platt and Thomas Zaborowski citation of supplemental authorities. Date of service: 11/13/2014. [9311944] [13-15671] (JCS) [Entered: 11/13/2014 01:36 PM] |
| 11/14/2014 | 44 | Filed (ECF) Appellants Managed Health Network, Inc. and MHN Government Services, Inc. citation of supplemental authorities. Date of service: 11/14/2014. [9312635] [13-15671] (TJL) [Entered: 11/14/2014 03:47 AM] |
| 11/18/2014 | 45 | ARGUED AND SUBMITTED TO RONALD M. GOULD, PAUL J. WATFORD and RICARDO S. MARTINEZ. [9317127] (HH) [Entered: 11/18/2014 11:48 AM] |
| 12/17/2014 | 46 | FILED MEMORANDUM DISPOSITION (RONALD M. |

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| | | GOULD, PAUL J. WATFORD and RICARDO S. MARTINEZ) AFFIRMED. FILED AND ENTERED JUDGMENT. [9352462] (MM) [Entered: 12/17/2014 09:10 AM] |
| 01/14/2015 | 49 | Filed (ECF) Appellants Managed Health Network, Inc. and MHN Government Services, Inc. petition for rehearing en banc (from 12/17/2014 memorandum). Date of service: 01/14/2015. [9382466] [13-15671] (TJL) [Entered: 01/14/2015 01:46 PM] |
| 02/09/2015 | 50 | Filed order (RONALD M. GOULD, PAUL J. WATFORD and RICARDO S. MARTINEZ) Judge Gould votes to grant the petition for rehearing en banc. Judge Watford votes to deny the petition for rehearing en banc, and Judge Martinez so recommends. The full court has been advised of the petition for rehearing en banc, and no judge requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. The petition for |

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| | | rehearing en banc, filed January 14, 2015, is DENIED. [9414225] (SM) [Entered: 02/09/2015 11:51 AM] |
| 02/13/2015 | 51 | Filed (ECF) Appellants Managed Health Network, Inc. and MHN Government Services, Inc. Motion to stay the mandate. Date of service: 02/13/2015. [9421428] [13-15671] (TJL) [Entered: 02/13/2015 01:48 PM] |
| 02/13/2015 | 52 | Filed order (RONALD M. GOULD, PAUL J. WATFORD and RICARDO S. MARTINEZ) Appellants' motion to stay the mandate is GRANTED. The mandate is stayed for a period of ninety days from the date of this order. If Appellants file a petition for writ of certiorari in the United States Supreme Court during the period of the stay, the stay shall continue until final disposition by the Supreme Court. See Fed. R. App. P. 41. [9421977] (SM) [Entered: 02/13/2015 04:48 PM] |
| 06/16/2015 | 54 | Received notice from the Supreme Court: petition for certiorari filed on 06/10/2015. |

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| | | Supreme Court Number 14-1458. [9577066] (RR) [Entered: 06/16/2015 05:12 PM] |
| 10/01/2015 | 55 | Received notice from the Supreme Court. Petition for certiorari GRANTED on 10/01/2015. Supreme Court Number 14-1458. [9704728] (RR) [Entered: 10/01/2015 07:00 PM] |

**U.S. District Court**
**California Northern District (San Francisco)**
**CIVIL DOCKET FOR CASE #: 3:12-cv-05109-S**

| | | |
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| Zaborowski et al v. MHN Government Services, Inc. et al | | Date Filed: 10/02/2012 |
| Assigned to: Hon. Susan Illston | | Jury Demand: Plaintiff |
| Relate Case Cases: | 3:13-cv-03016-SI | Nature of Suit: 710 Labor: Fair Standards |
| | 3:14-cv-01449-SI | Jurisdiction: Federal Question |
| Case in other court: USCA, 13-15671 | | |

Cause: 29:201 Fair Labor Standards Act

| Date Filed | # | Docket Text |
|---|---|---|
| 10/02/2012 | 1 | CLASS ACTION COMPLAINT; Jury Trial Demanded against MHN Government Services, Inc., Managed Health Network, Inc. (Filing fee $350.00, receipt number 34611079242). Filed by Thomas Zaborowski, Vanessa Baldini. (Attachments: #1 Civil Cover Sheet) (gba, COURT STAFF) (Filed on 10/2/2012) (Entered: 10/02/2012) |

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| 11/01/2012 | 15 | MOTION to Compel Arbitration and Stay Proceedings Pending Arbitration filed by MHN Government Services, Inc., Managed Health Network, Inc. Motion Hearing set for 12/7/2012 09:00 AM in Courtroom 10, 19th Floor, San Francisco before Hon. Susan Illston. Responses due by 11/15/2012. Replies due by 11/26/2012. (Attachments: #1 Declaration of Dena Maddox In Support of Motion to Compel Arbitration, #2 Exhibit A through D to Declaration of Dena Maddox, #3 Proposed Order Granting Motion to Compel Arbitration) (Long, Timothy) (Filed on 11/1/2012) (Entered: 11/01/2012) |
| 12/21/2012 | 29 | RESPONSE (re 15 MOTION to Compel Arbitration and Stay Proceedings Pending Arbitration) filed by Vanessa Baldini, Thomas Zaborowski. (Attachments: #1 Declaration Thomas Zaborowski, #2 Exhibit A Zaborowski Declaration, #3 Exhibit B Zaborowski Declaration, #4 Exhibit C Zaborowski Declaration, #5 Exhibit D Zaborowski Declaration, #6 Exhibit E Zaborowski Declaration, #7 Exhibit F Zaborowski Declaration, #8 Exhibit G Zaborowski Declaration, #9 Exhibit H Zabo- |

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| | | rowski Declaration, #10 Declaration Vanessa Baldini, #11 Proposed Order Proposed Order) (Vaught, Allen) (Filed on 12/21/2012) (Entered: 12/21/2012) |
| 01/11/2013 | 31 | REPLY (re 15 MOTION to Compel Arbitration and Stay Proceedings Pending Arbitration) filed by MHN Government Services, Inc., Managed Health Network, Inc. (Damrell, Lauri) (Filed on 1/11/2013) (Entered: 01/11/2013) |
| 02/08/2013 | 40 | AMENDED COMPLAINT FIRST AMENDED COMPLAINT FOR VIOLATIONS OF FLSA AND STATE WAGE AND HOUR LAWS against MHN Government Services, Inc., Managed Health Network, Inc. Filed by Thomas Zaborowski, Vanessa Baldini. (Attachments: #1 Exhibit A, #2 Exhibit B) (Sagafi, Jahan) (Filed on 2/8/2013) (Entered: 02/08/2013) |
| 02/15/2013 | 42 | RESPONSE (re 15 MOTION to Compel Arbitration and Stay Proceedings Pending Arbitration) Plaintiffs' Supplemental Brief in Opposition to MHN's Motion to Compel Arbitration filed by Vanessa Baldini, Kim Dale, |

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| | | Nancy Paddock, Thomas Zaborowski. (Sagafi, Jahan) (Filed on 2/15/2013) (Entered: 02/15/2013) |
| 03/01/2013 | 48 | Supplemental Brief re 15 MOTION to Compel Arbitration and Stay Proceedings Pending Arbitration filed by MHN Government Services, Inc., Managed Health Network, Inc. (Attachments: #1 Declaration of John Crocker ISO Dfts' Supplemental Reply, #2 Exhibit A to Declaration of John Crocker, #3 Exhibit B to Declaration of John Crocker) (Related document(s) 15) (Long, Timothy) (Filed on 3/1/2013) (Entered: 03/01/2013) |
| 03/14/2013 | 54 | MOTION to Certify Class Plaintiff's Notice of Motion and Motion for Motion for Conditional FLSA Collective Action Certification and Issuance of Notice filed by Vanessa Baldini, Kim Dale, Nancy Paddock, Thomas Zaborowski, Maria Howard, Tim Platt. Motion Hearing set for 4/19/2013 09:00 AM in Courtroom 10, 19th Floor, San Francisco before Hon. Susan Illston. Responses due by 3/28/2013. Replies due by |

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| | | 4/4/2013. (Sagafi, Jahan) (Filed on 3/14/2013) (Entered: 03/14/2013) |
| 04/03/2013 | 68 | ORDER DENYING DEFENDANTS' MOTION TO COMPEL ARBITRATION 59 60 65 15 (Illston, Susan) (Filed on 4/3/2013) (Entered: 04/03/2013) |
| 04/05/2013 | 70 | RESPONSE (re 54 MOTION to Certify Class Plaintiff's Notice of Motion and Motion for Motion for Conditional FLSA Collective Action Certification and Issuance of Notice) filed by MHN Government Services, Inc., Managed Health Network, Inc. (Attachments: #1 Objections to Evidence In Support of Opposition to Plaintiffs' Motion for Conditional FLSA Collective Action Certification and Issuance of Notice, #2 Declaration of Tim Long ISO Defendant' Opposition with Exhibits A-D, #3 Exhibit E to Declaration of Tim Long ISO Opposition, #4 Declaration of Maddox ISO Opposition, #5 Declaration of Robinson ISO Opposition, #6 Declaration of Steelman ISO Opposition, #7 Declaration of Miller ISO Opposition, #8 Request for Judicial Notice ISO Opposition) |

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| | | (Long, Timothy) (Filed on 4/5/2013) (Entered: 04/05/2013) |
| 04/08/2013 | 71 | NOTICE OF APPEAL to the 9th CCA 13-15671 MHN Government Services, Inc., Managed Health Network, Inc. (Appeal fee of $455 receipt number 0971-7611709 paid.) (Attachments: # 1 Exhibit A) (Long, Timothy) (Filed on 4/8/2013) (Entered: 04/08/2013) |
| 04/09/2013 | 73 | USCA Case Number 13-15671 USCA for 71 Notice of Appeal filed by Managed Health Network, Inc., MHN Government Services, Inc. (ysS, COURT STAFF) (Filed on 4/9/2013) (Entered: 04/10/2013) |
| 04/12/2013 | 74 | NOTICE by Vanessa Baldini, Kim Dale, Nancy Paddock, Thomas Zaborowski of Filing of Consent to Join Form (Sagafi, Jahan) (Filed on 4/12/2013) (Entered: 04/12/2013) |
| 04/12/2013 | 76 | REPLY (re 54 MOTION to Certify Class Plaintiff's Notice of Motion and Motion for Motion for Conditional FLSA Collective Action Certification and Issuance of Notice) filed by Vanessa Baldini, Kim Dale, Maria Howard, Nancy Paddock, Tim |

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| | | Platt, Thomas Zaborowski. (Attachments: #1 Declaration Sagafi, #2 Declaration - Peter, #3 Declaration - Hennis, #4 Declaration - Platt, #5 Declaration – Zaborowski)(Sagafi, Jahan) (Filed on 4/12/2013) (Entered: 04/12/2013) |
| 04/25/2013 | 80 | ORDER GRANTING PLAINTIFFS' MOTION FOR CONDITIONAL FLSA COLLECTIVE ACTION CERTIFICATION re 54. Parties proposed notice is due May 3, 2013. Defendants to produce info by 5/17/13. (Illston, Susan) (Filed on 4/25/2013) Modified on 4/26/2013 (ysS, COURT STAFF). (Entered: 04/25/2013) |
| 04/26/2013 | 82 | Transcript of Proceedings held on March 15, 2013, before Judge Susan Illston. Court Reporter/ Transcriber Joan Marie Columbini, CSR, RPR, Telephone number 415-255-6842. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction. After that |

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| | | date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. Release of Transcript Restriction set for 7/25/2013. (Related documents(s) 78) (Columbini, Joan) (Filed on 4/26/2013) (Entered: 04/26/2013) |
| 01/31/2014 | 169 | Second AMENDED COMPLAINT against All Defendants. Filed by Kim Dale, Thomas Zaborowski, Nancy Paddock, Tim Platt, Maria Howard, Vanessa Baldini. (Attachments: #1 Exhibit A) (Vaught, Allen) (Filed on 1/31/2014) Modified on 2/3/2014 (ysS, COURT STAFF). (Entered: 01/31/2014) |
| 01/13/2015 | 180 | ORDER previously filed to be spread to all related cases. *ORDER GRANTING DEFENDANTS' MOTION TO STAY CASE PENDING APPEAL AND DENYING ALTERNATIVE MOTION TO DISMISS AND MOTION TO COMPEL, WITHOUT PREJUDICE TO RENEWAL AFTER STAY IS LIFTED (Illston, Susan) (Filed on 6/3/2014) (Entered: 06/03/2014). Signed by Judge Susan Illston on 6/3/14. (tfS, COURT STAFF) |

(Filed on 1/13/2015) (Entered: 01/13/2015)

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*Attorneys for Plaintiffs and proposed Class members*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

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|---|---|
| THOMAS ZABOROWSKI, VANESSA BALDINI, KIM DALE NANCY PADDOCK, MARIA HOWARD, and TIM PLATT, on behalf of themselves, and all others similarly situated,<br><br>Plaintiffs,<br><br>v.<br><br>MHN GOVERNMENT SERVICES, INC. and MANAGED HEALTH NETWORK, INC.,<br><br>Defendants. | Case No. 12-CV-05109-SI<br><br>**SECOND AMENDED COMPLAINT FOR VIOLATIONS OF FLSA AND STATE WAGE AND HOUR LAWS**<br><br>**COLLECTIVE ACTION**<br><br>**CLASS ACTION**<br><br>**DEMAND FOR JURY TRIAL** |

Plaintiffs Thomas Zaborowski, Vanessa Baldini, Kim Dale, Nancy Paddock, Maria Howard, and Tim Platt (collectively, 'Plaintiffs') allege, on behalf of themselves and classes of those similarly situated, as follows:

## JURISDICTION AND VENUE

1. This Court has federal question jurisdiction over this action pursuant to 28 U.S.C. § 1331 and section 16(b) of the Fair Labor Standards Act ('FLSA'), 29 U.S.C. § 216(b).

2. Furthermore, this Court has federal question jurisdiction over Plaintiffs' declaratory judgment action brought pursuant to 28 U.S.C. § 2201. Plaintiffs' declaratory judgment action involves adjudication of federal issues, because the arbitration agreement at issue seeks to impair, and has the practical effect of impairing, the MFLCs' substantive and procedural rights under the FLSA.

3. This Court also has original jurisdiction over this action under the Class Action Fairness Act, 28 U.S.C. § 1332(d), because this is a class action in which: (1) there are 100 or more members in the proposed class; (2) at least some members of the proposed class have a different citizenship from Defendant; and (3) the claims of the proposed class members exceed $5,000,000 in the aggregate.

4. In addition, this Court has supplemental jurisdiction under 28 U.S.C. § 1367 over Plaintiff's state wage and hour law claims because those claims derive from a common nucleus of operative fact.

5. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

6. The United States District Court for the Northern District of California has personal jurisdiction over MHN Government Services, Inc. ('MHNGS') and Managed Health Network, Inc. ('MHN, Inc.') (collectively, 'MHN' or 'Defendants'), because both MHN entities are headquartered in this District, do business in California and in this District, and because many of the acts complained of and giving rise to the claims alleged occurred in and emanated from this District.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims occurred in this District.

8. Intradistrict assignment: Pursuant to N.D. Cal. Local Rule 3-2(c) and (e), intradistrict assignment to the San Francisco Division is proper because a substantial part of the events that give rise to the claims asserted occurred in Marin County.

## SUMMARY OF CLAIMS

9. Plaintiffs performed work for MHN as Military and Family Life Consultants ('MFLCs') while classified by MHN as independent contractors. MFLCs have the primary duty of serving as routers of information for servicemembers at the military bases to which they are assigned. (MHN contracts with the federal government to provide health care services to servicemembers at those bases.)

10. MHN has unlawfully classified all MFLCs nationwide as independent contractors, despite the fact that they should have been classified as nonexempt employees. The MFLCs satisfied all applicable legal tests for employment status. In addition, MHN cannot bear its burden of showing that MFLCs fit within one of the narrow exemptions to the FLSA or applicable state wage and hour law. Therefore, the MFLCs are entitled to overtime pay for all overtime hours worked, as well as additional remedies available under applicable law.

11. MHN has willfully refused to pay the MFLCs the required overtime compensation for overtime hours worked, and has failed to keep legally required time records.

12. MHN's practices violate the FLSA and the state laws pled herein. Plaintiffs seek declaratory relief; overtime compensation for all overtime work required, suffered, or permitted by MHN; liquidated and/or other damages and penalties as permitted by applicable law; benefits recoverable under applicable law and interest; and attorneys' fees and costs. Plaintiffs also seek declaratory relief regarding the unconscionability and inapplicability of MHN's arbitration agreement.

13. On information and belief, since the filing of the initial complaint in this action, MHN has reclassified or is in the process of reclassifying all MFLCs from independent contractor status to employee status.

## SUMMARY OF COLLECTIVE AND CLASS ACTION ALLEGATIONS

14. Plaintiffs bring this action on behalf of themselves and all persons who have worked for MHN in any location covered by the FLSA[1] as MFLCs (the 'Class Positions'), at any time within the three years prior to the filing of the initial Compıaint through the date of the final disposition of this action (the 'Nationwide FLSA Period'). This group is hereinafter referred to as the 'Nationwide FLSA Plaintiffs.'

15. Plaintiff Vanessa Baldini ('the California Named Plaintiff') also bring this action on behalf of all persons who have worked for MHN in California in the Class Positions ('the California Class'), at any time within the four years prior to the date of the filing of the First Amended Complaint through the date of the final disposition of this action (the 'California Class Period').

16. Plaintiff Nancy Paddock ('the Hawaii Named Plaintiff') also brings this action on behalf of all persons who have worked for MHN in Hawaii in the Class Positions ('the Hawaii Class'), at any time within the six years prior to the date of the filing of the First Amended Complaint through the date of the final disposition of this action (the 'Hawaii Class Period').

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[1] The FLSA covers work performed in the fifty states, Washington, D.C., Guam, and other locations. 29 U.S.C. § 213(f).

17. Plaintiffs Kim Dale and Nancy Paddock ('the Kentucky Named Plaintiffs') also bring this action on behalf of all persons who have worked for MHN in Kentucky in the Class Positions ('the Kentucky Class'), at any time within the five years prior to the date of the filing of the First Amended Complaint through the date of the final disposition of this action (the 'Kentucky Class Period').

18. Plaintiff Thomas Zaborowski ('the Nevada Named Plaintiff') also brings this action on behalf of all persons who have worked for MHN in Nevada in the Class Positions ('the Nevada Class'), at any time within the two years prior to the date of the filing of the First Amended Complaint through the date of the final disposition of this action (the 'Nevada Class Period').

19. Plaintiff Tim Platt ('the New Mexico Named Plaintiff') also brings this action on behalf of all persons who have worked for MHN in New Mexico in the Class Positions ('the New Mexico Class'), at any time within the one year prior to the date of the filing of this Second Amended Complaint through the date of the final disposition of this action (the 'New Mexico Class Period').

20. Plaintiffs Maria Howard and Tim Platt ('the New York Named Plaintiffs') also bring this action on behalf of all persons who have worked for MHN in New York in the Class Positions ('the New York Class'), at any time within the six years prior to the date of the filing of this Second Amended Complaint through the date of the final disposition of this action (the 'New York Class Period').

21. Plaintiff Maria Howard ('the North Carolina Named Plaintiff') also brings this action on behalf of all persons who have worked for MHN in North Carolina in the Class Positions ('the North Carolina Class'), at any time within the two years prior to the date of the filing of this Second Amended Complaint through the date of the final disposition of this action (the 'North Carolina Class Period').

22. The California, Hawaii, Kentucky, Nevada, New Mexico, New York, and North Carolina Classes are hereinafter referred to as the 'State Law Classes.'

## THE PARTIES

### I. Plaintiffs

#### A. Thomas Zaborowski

23. Plaintiff Thomas Zaborowski has worked for MHN as an MFLC from approximately November 2010 to September 2012.

24. Specifically, he has worked for MHN as an MFLC during the following time periods:

a. From November 2010 to November 2011, he worked in Fort Riley, Kansas.

b. From February to May 2012, he worked at Nellis Air Force Base, Nevada.

c. From June to September 2012, he worked at Creech Air Force Base, Nevada.

25. Mr. Zaborowski consents to sue for violations of the FLSA, pursuant to 29 U.S.C. §§ 216(b) and 256. His consent to join form was attached to the First Amended Complaint.

**B. Vanessa Baldini**

26. Plaintiff Vanessa Baldini has worked for MHN as an MFLC from approximately May 2009 to the present.

27. Specifically, she has worked for MHN as an MFLC during the following time periods:

a. From approximately May to June 2009, she worked in Kileen, Texas.

b. From approximately June 2009 to September 2009, she worked in Yorktown, Virginia.

c. From approximately October 2009 to January 2010, she worked in Las Vegas, Nevada.

d. From approximately April to May 2010, she worked in Leemore, California.

e. From approximately October 2010 to April 2011, she worked in Fort Riley, Kansas.

f. At other times during the period May 2009 to June 2011, she worked overseas.

g. From June 2011 to the present, she has remained active in MHN's system, but has not performed work for MHN.

28. Ms. Baldini consents to sue for violations of the FLSA, pursuant to 29 U.S.C. §§ 216(b) and 256. Her consent to join form was attached to the First Amended Complaint.

C. **Kim Dale**

29. Plaintiff Kim Dale worked for MHN as an MFLC from April 2009 to October 2012.

30. Specifically, she has worked for MHN as an MFLC during the following time periods:

a. From approximately April to May 2009, she worked in Ft. Campbell, Kentucky.

b. From approximately June to August 2009, she worked in Indian Head, Maryland.

c. From approximately August to December 2009, she worked in San Antonio, Texas.

d. From approximately January to May 2010, she worked in Clarksville, Tennessee.

e. From approximately August to December 2010, she worked in Ft. Campbell, Kentucky.

f. From approximately January to May 2011, she worked in Clarksville, Tennessee.

g. From approximately January to May 2012 and August to October 2012, she worked in Ft. Campbell, Kentucky.

31. Ms. Dale consents to sue for violations of the FLSA, pursuant to 29 U.S.C. §§ 216(b) and 256. Her consent to join form was attached to the First Amended Complaint.

**D. Nancy Paddock**

32. Plaintiff Nancy Paddock worked for MHN as an MFLC from October 2007 to October 2012.

33. Specifically, she worked for MHN as an MFLC during the following time periods:

a. From approximately October 2007 to February 2008, she worked in Ft. Campbell, Kentucky.

b. From approximately March to April 2010, she worked in Anchorage, Alaska.

c. From approximately June to July 2010, she worked in Schofield Barracks, Hawaii.

d. From approximately November 2010 to May 2011, she worked in Ft. Riley, Kansas.

e. From approximately November 2011 to January 2012, she worked in Lincoln, Nebraska and other cities in Nebraska.

f. From approximately January to April 2012, she worked in Fort Walton Beach, Florida.

g. From approximately April to June 2012, she worked in Pensacola, Florida.

h. From approximately September to October 2012, she worked in El Paso, Texas.

34. Ms. Paddock consents to sue for violations of the FLSA, pursuant to 29 U.S.C. §§ 216(b) and 256. Her consent to join form was attached to the First Amended Complaint.

**E. Maria Howard**

35. Plaintiff Maria Howard worked for MHN as an MFLC from August 2009 to December 2012.

36. Specifically, she worked for MHN as an MFLC during the following time periods:

a. From approximately August 2009 to October 2009, she worked in Ft. Campbell, Kentucky.

b. From approximately October 2009 to December 2009, she worked in Ft. Drum, New York.

c. From approximately March 2010 to May 2010, she worked in Albany, Georgia.

d. From approximately October 2010 to April 2011, from approximately 2012 to April 2012, and from approximately July 2012 to September 2012, she worked in Ft. Bragg, North Carolina.

e. From approximately July 2011 to October 2011, she worked in Ft. Stewart, Georgia.

f. From approximately May 2012 to July 2012, she worked in Cherry Point, North Carolina.

g. From approximately July 2012 to September 2012, she worked in Ft. Campbell, Kentucky.

h. From approximately September 2012 to October 2012, she worked in Ft. Eustis, Virginia.

i. From approximately October 2012 to December 2012, she worked at Eielson Air Force Base, Alaska.

37. Ms. Howard consents to sue for violations of the FLSA, pursuant to 29 U.S.C. §§ 216(b) and 256 Her consent to join form was filed on February 11, 2013. Docket No. 41.

**F. Tim Platt**

38. Plaintiff Tim Platt worked for MHN as an MFLC from approximately April 2011 to September 2012.

39. Specifically, he worked for MHN as an MFLC during the following time periods:

a. From approximately April 2011 to July 2011, he worked in Ft. Riley, Kansas.

b. From approximately July 2011 to September 2011, from approximately January 2012 to

April 2012, and from approximately August 2012 to September 2012, he worked in Ft. Huachuca, Arizona.

c. From approximately October 2011 to December 2011, he worked in Ft. Drum, New York.

d. From approximately May 2012 to July 2012, he worked in White Sands, New Mexico.

40. Mr. Platt consents to sue for violations of the FLSA, pursuant to 29 U.S.C. §§ 216(b) and 256. His consent to join form was filed on February 25, 2013. Docket No. 45.

## II. Defendants (collectively, 'MHN')

### A. MHN Government Services, Inc. ('MHNGS')

41. Defendant MHN Government Services, Inc. ('MHNGS') is a corporation incorporated under the laws of Delaware.

42. MHNGS's principal office and place of business is located at 2370 Kerner Boulevard, San Rafael, California.

43. MHNGS is a division of Managed Health Network, Inc. ('MHN, Inc.') *See* **https://www.mhngs.com/app/aboutus/about_us.content** (last visited Feb. 7, 2013).

### B. Managed Health Network, Inc. ('MHN, Inc.')

44. MHN, Inc. is a corporation incorporated under the laws of California.

45. MHN, Inc.'s principal office and place of business is located at 2370 Kerner Boulevard, San Rafael, California.

46. According to its website, MHN, Inc. is a 'Health Net company.' *See* **https://www.mhn.com/content/about-us** (last visited Feb. 7, 2013).

47. The practices described herein were performed in and emanated from the San Rafael, California headquarters, and were performed at military bases, through CTOs that MHN entered into pursuant to its contracts with the U.S. government.

## FACTUAL BACKGROUND

### I. MFLCs' Work

#### A. Generally

48. Plaintiffs and all Class members have performed work for MHN as Military and Family Life Consultants ('MFLCs'). Throughout the relevant period, all MFLCs have consistently been misclassified by MHN as independent contractors.

49. MHN contracts with the United States Department of Defense to provide healthcare services at and around U.S. military bases. The services provided by MFLCs are an integral part of the MHN's business because, without MFLCs, MHN

could not satisfy its obligations under its contracts with the federal government.

50. MHN controls MFLCs' work and limits their freedom and discretion through various mechanisms, including (a) policies set forth in documents (e.g., the MHN Provider Manual, the Provider Services Task Order Agreement ('PSTOA' or 'Agreement'), Consultant Task Orders ('CTOs'), and other requirements) and (b) close supervision by direct supervisors and other MHN managers.

### B. MHN's Use Of CTOs To Set Forth MFLCs' Assignments

51. MHN hires MFLCs using agreements known as CTOs, which resemble orders issued by the United States Armed Forces. CTOs identify the assignment location, assignment duration, amount of compensation, method of travel, lodging arrangements, and other details.

52. Each CTO states that the MFLC is only to provide the limited services mandated by the PSTOA, which in turn incorporates MHN's MFLC Provider Manual. Together, these documents place significant control over and restrictions on what MFLCs can and cannot do.

### C. MFLCs' Job Duties

53. The Military and Family Life Consultant's primary duty, consistent with MHN's use of the term 'Consultant,' is to serve as a router of information for servicemembers at the military bases

to which they are assigned. According to MHN documents, MFLCs:

a. participate in 'meetings or sessions,'

b. 'promote the MFLC program and services,' and

c. 'deliver[] presentations (either psychoeducational presentations, or 'briefings' to describe the program to the population of the installation) or other types of outreach/promotion of the program.'

54. Another MHN document explains that MFLCs:

> [p]rovide short term, situational, problem solving non-medical counseling services in support of military personnel and their families at the location and for the time period specified [in the CTO] **in accordance with** the [PSTOA] executed between MHN and [MFLC] and **all requirements, policies and procedures** contained in the MFLC Provider Manual and the MFLC Quality Assurance Surveillance Program. [Emphasis added.]

55. As part of that work, MFLCs also routinely perform mundane tasks such as attending

briefings, answering phones and serving as de facto receptionists.

56. MHN provides standard materials for MFLCs to use in their work. For example, the MHN Provider Manual states that '[MFLCs] use military and contractor approved presentations.' Moreover, MHN expressly forbids MFLCs from using their own presentations or handouts on assignment; materials must be approved by an MHN supervisor.

57. Although MHN requires MFLCs to be psychologists, social workers, professional counselors, marriage family therapists, or registered nurses, it does not permit them to perform the functions traditionally associated with those jobs. Specifically, the MHN Provider Manual states:

> **Consultants are not working as traditional therapists** and should not use clinical and diagnostic terminology. **Further, because this is a consulting (rather than therapist) role, licensure in the state of assignment is not required.** [Emphasis added.]

58. Furthermore, a MHN program summary brochure describing the MFLC role explains:

> MFLCs provide informal support and outreach for Service Members and families. MFLCs work exclusively with V-Codes; **they do not diagnose or**

> **treat mental disorders**. (Mental disorders are referred to Military Mental Health resources or other **professional** resources.) [Emphasis added.]

59. MHN's 'Program Summary' also provides that:

> **The consultants' role in this program is unique in that they are not working as traditional therapists.** The stated primary MFLC role is to assess needs, provide support or refer to appropriate resources as necessary. [Emphasis added.]

60. MHN does not require MFLCs to be licensed to render services in the state in which they work.

61. Thus, while many MFLCs might be considered 'professionals' in their outside non-MHN occupations, their primary duty, based on the tasks and duties assigned them by MHN, is quite different. MFLCs' primary duty does not involve work requiring advanced knowledge in a field of science or learning.

**D. MHN's Standard Training And Testing**

62. MFLCs are extensively trained and tested by MHN on how to do their jobs.

63. The MHN Provider Manual explains:

> MHNGS offers **comprehensive resources** to assure that all [MFLCs] filling assignments are fully prepared. Your **required training** will assist you in understanding your role and the parameters of MFLC Service delivery. [Emphasis added.]

64. The MHN Provider Manual also states:

> Training required for all [MFLCs] includes critical program information, including **role definition**, **parameters of the program**, general information about military environments, MHNGS policies and procedures, **guidelines about specific situations**, and overall ins and outs of service delivery. This section also includes **Presentation Skills training**, which will prepares [*sic*] [MFLCs] to deliver presentations--an **essential part** of the MFLC role. [Emphasis added.]

65. To ensure that MFLCs can comply with its policies and requirements, MHN requires MFLCs to attain minimum scores (such as 80%) on tests of their knowledge of various aspects of MHN policies and requirements.

### E. MHN's Supervision And Control Over MFLCs

66. MHN closely supervises MFLCs. Its 'Program Summary' explains: 'All [MFLCs] work under the direction of an MHN clinical supervisor and a military point of contact (POC).' The MHN Provider Manual reiterates this and adds:

> The FSC Officer/A&FRC Director or other military POC will provide oversight to address **day-to-day duties** and scheduling issues. The MHN supervisor provides **mandatory, weekly supervision** via telephone regarding clinical and administrative issues, making sure the [MFLCs] are **operating within the parameters of the program** and providing quality services to military members and families. All [MFLCs] are **required to attend the weekly supervision calls** regardless of how long they have been assigned to the location. [Emphasis added.]

67. MHN supervisors assign daily tasks and ensure that MFLCs complete them in the approved manner by monitoring them.

68. Deviation from the assigned method of providing services or failure to follow the instructions of MHN supervisors can result in termination of the MFLC.

69. MFLCs must adhere to a dress code, which prohibits wearing jeans or tennis shoes, among other things.

70. According to the MHN Provider Manual, MFLCs 'are expected to refrain from engaging in any political discussions with military members and their families or civilian staff either on or off the installation.'

71. The Provider Manual also requires that 'untoward events should be immediately reported to the [MFLC's] MHN supervisor. **DO NOT LEAVE A VOICEMAIL MESSAGE.**' [Emphasis in original.] The Manual provides an example of an 'untoward event' as: 'When leaving the [MFLC's] office after a consultation, a client slips and falls and is injured.'

72. MHN's control is so pervasive and detailed that it prohibits MFLCs from seeing friends or even family members at duty locations. In the MHN 'Frequently Asked Questions' pamphlet, MHN explains that '[MFLCs] are expected to focus on service delivery during assignment periods; therefore families and friends may not visit.'

73. MHN also requires MFLCs to always be within one hour from the military base at which they are assigned.

74. In short, even the MFLC's time outside of 'normal business hours' is not her own to do with as she chooses.

### F. MFLCs' Hours

75. MHN requires MFLCs to work during normal business hours. Beyond those hours,

MHN often requires MFLCs to work on evenings and weekends, including 'on call' time.

76. Although MHN instructs MFLCs that '[t]he MFLC work week is typically 40 hours,' in reality, MFLCs regularly work in excess of 40 hours per workweek.

77. MHN has a policy and practice of not paying MFLCs for hours over 40 in a week. Because of their classification as independent contractors, MFLCs are not paid time and a half overtime compensation as required by the FLSA and applicable state law.

## II. Misclassification

78. MHN has misclassified its MFLCs as so-called 'independent contractors.' However, the MFLCs should have been classified as nonexempt employees, as defined by the FLSA and applicable state law.

### A. Independent Contractor Misclassification

79. MFLCs should have been classified as employees, not independent contractors.

80. **Dependence.** As a matter of economic reality, the MFLCs are economically dependent on MHN as opposed to being in business for themselves. MFLCs are prohibited from promoting themselves or their non-MHN businesses while on assignment.

81. **Time period.** MFLCs are engaged for lengthy periods of time—usually more than a year—under periodic contracts called CTOs. CTOs typically set forth a period of several months. CTOs are generally automatically extended unless there is a performance or personnel problem that warrants a change in assignment or termination of the MFLC. For all practical purposes, MHN renews MFLCs' CTOs so fluidly that there is little disruption, if any, in their employment period with MHN. This arrangement typically results in a de facto employment period of multiple years for MFLCs.

82. **Control.** MHN exercises significant control over MFLCs' work through several mechanisms. MFLCs are taught how to do their job, told how to do their jobs, told when to do their jobs and told where to do their jobs.

83. **Profit / loss.** MFLCs do not have an opportunity to make a profit or loss in any real sense, like true independent contractors do. MHN pays the MFLCs by the hour or week, as opposed to by commission or based on productivity. Furthermore, MHN prohibits MFLCs from engaging in other meaningful work while performing MFLC services.

84. **Employment relationship.** MHN—and not the MFLCs themselves—negotiates and obtains behavioral health contracts from the U.S. government. MFLCs are simply the labor used by MHN to meet its contractual obligations with the U.S. government. MFLCs are an integral part of

MHN's business. Without the MFLCs, MHN could not fulfill its contracts with the U.S. government. In MHN's words, MFLCs are the 'face' of the program.

85. **Termination without cause.** MHN's PSTOA reserves to MHN the right to terminate[] without cause' the relationship with the MFLCs.

86. **Tools and instrumentalities.** MHN provides the resources, assets, and parameters that determine how the MFLCs carry out their assignments. According to the MHN Provider Manual, MHN 'provide[s] all written materials such as presentations, power points, handouts, etc.' MFLCs do not bring their own tools to the job in any meaningful way. The Manual explains that MFLCs 'will not be able to use any of their own materials or develop any new materials without approval from the MHN Director of Quality and the military POC. In fact, '[a]ll promotional materials, such as brochures and business cards, will be provided by the installation. [MFLCs] who are asked by the military POC to create any type of promotional materials should contact the MHN supervisor.'

87 **No subordinates.** MFLCs do not supervise other individuals. MFLCs do not hire their own employees to facilitate their assignments. They are not allowed to subcontract.

### B. Exemption Misclassification

88. CTOs. MHN's CTOs provide for MFLCs to be paid in one of two ways: on an hourly or salary basis.

a. **Hourly.** Where MFLCs' CTOs provide for hourly pay, MHN cannot satisfy the FLSA's or applicable state laws' salary basis test, because they are not paid on a salary basis. Therefore, those MFLCs cannot be classified as exempt employees.

b. **Salary.** Where MFLCs' CTOs provide for salary pay, MHN cannot satisfy the FLSA's or applicable state laws' salary basis test because MHN has a policy and practice of making improper compensation deductions that violate the salary basis test. Specifically, those CTOs provide that when an MFLC 'performs less than the full services contracted during a standard workweek for reasons other than a federally recognized holiday, MHN reserves the right to prorate the [MFLCs] payment accordingly.'

89. **Nonexempt.** MFLCs do not fit within any exemption to the FLSA or applicable state law.

## III. Benefits Available To MHN Employees

90. Because they should properly be considered employees, MFLCs are entitled to the same benefits to which properly classified MHN employees are entitled.

91. On information and belief, all full-time MHN employees are entitled to the following benefits: (1) medical, (2) dental, (3) vision, (4) group legal, (5) life, (6) short- and long-term disability, (7) accidental death and dismemberment, (8) paid time off, and (9) 401(k). These benefits were not provided to Plaintiffs or Class members.

## IV. MHN's Unconscionable Arbitration Clause

92. As a condition of employment, MHN requires MFLCs to sign a PSTOA that includes, in the 20th of 23 paragraphs, a binding arbitration clause. This Agreement (including the arbitration clause it contains) is presented on a take-it-or-leave-it basis, and cannot be negotiated.

93. The arbitration clause is both procedurally and substantively unconscionable.

a. The arbitration clause is procedurally unconscionable because (1) it is a form contract presented on a take-it-or-leave-it basis, (2) the applicable rules were not provided at the time of signature, and (3) the arbitration provision is buried in a longer contract, with no requirement that the MFLC sign it separately.

b. The arbitration clause is substantively unconscionable because it provides (1) that the statute of limitations is limited to six months, (2) that MHN can select any three arbitrators it wishes, from which the plaintiff selects

one, (3) that punitive damages are prohibited, (4) that discovery is limited to one fact witness and one expert witness per party, (4) that substantive cost- and fee-shifting rules under the FLSA, California law, and other laws are changed to MHN's unilateral advantage, (5) that MFLCs must bear unusually high arbitration filing fees, and (7) that independent contractor misclassification claims are completely barred because the arbitrator cannot 'refuse to enforce any agreements between the parties [e.g., the independent contractor agreement].'

94. The arbitration clause is so permeated with unconscionability that severance is inappropriate, and the entire clause must be stricken.

95. Accordingly, Plaintiffs, on behalf of themselves and all Class members, seek a declaratory judgment from this Court that MHN's mandatory arbitration clause is unconscionable and unenforceable.

## COLLECTIVE ACTION ALLEGATIONS

96. Plaintiffs bring the First Claim for Relief for violation of the FLSA as a collective action pursuant to section 16(b) of the FLSA, 29 U.S.C. § 216(b), on behalf of the Nationwide FLSA Plaintiffs.

97 Plaintiffs and Nationwide FLSA Plaintiffs are similarly situated in that they have substantially similar job requirements and pay provisions, and are subject to MHN's common

practice, policy, or plan of unlawfully characterizing them as independent contractors and refusing to pay them overtime pay in violation of the FLSA.

98. The First Claim for Relief for violations of the FLSA may be brought and maintained as an 'opt-in' collective action pursuant to section 16(b) of the FLSA, 29 U.S.C. § 216(b), since the claims of Plaintiffs are similar to the claims of the Nationwide FLSA Plaintiffs.

99. The contact information (including names, addresses, phone numbers, email addresses, and other identifying information) of the Nationwide FLSA Plaintiffs are available from MHN's records. Notice should be provided to the Nationwide FLSA Plaintiffs via first class mail, email, and posting in the offices where they have worked as soon as practicable, to allow the MFLCs to make informed decisions regarding their rights to seek overtime pay and other remedies.

## CALIFORNIA CLASS ACTION ALLEGATIONS

100. The California Named Plaintiff (Ms. Baldini) brings the Second, Third, Fourth, Fifth, Sixth, and Seventh Claims for Relief for violation of California's wage and hour, unfair competition, and private attorney general laws as a class action, pursuant to Fed. R. Civ. P. 23(a) and (b)(3), on behalf of all California Class members, defined in paragraph 15.

101. **Numerosity** (Fed. R. Civ. P. 23(a)(1))–The California Class is so numerous that

joinder of all members is impracticable. The California Named Plaintiff is informed and believes, and on that basis alleges, that during the California Class Period, MHN has employed at least fifty persons who satisfy the definition of the California Class.

102. **Commonality** (Fed. R. Civ. P. 23(a)(2))–Common questions of law and fact exist as to members of the California Class, including, but not limited to, the following:

a. Whether MHN unlawfully classified the California Class members as independent contractors;

b. Whether the California Class members are nonexempt employees entitled to overtime compensation for overtime hours worked under the overtime pay requirements of California law;

c. Whether MHN unlawfully failed to pay overtime compensation in violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, and the California Labor Code and related regulations, Cal. Labor Code §§ 201, 202, 203, 226, 510, 1174, 1174.5, and 1194, Cal. Wage Order No. 4-2001;

d. Whether MHN's policy and practice of classifying the California Class members as independent contractors exempt from overtime entitlement under California law and MHN's policy and practice of failing to pay overtime to California

Class members violate applicable provisions of California law, including applicable statutory and regulatory authority;

e. Whether MHN unlawfully failed to keep and furnish California Class members with records of hours worked, in violation of Labor Code §§ 226 and 1174;

f. Whether MHN unlawfully failed to provide California Class members with meal and rest breaks, in violation of Labor Code §§ 226.7 and 512;

g. Whether MHN's policy and practice of failing to pay its employees all wages due within the time required by law after their employment ended violates California law; and

h. The proper measure of damages sustained and the proper measure of restitution recoverable by members of the California Class.

103. **Typicality** (Fed. R. Civ. P. 23(a)(3))–The California Named Plaintiff's claims are typical of California Class members' claims. The California Named Plaintiff, like other California Class members, was subjected to MHN's policy and practice of refusing to pay overtime in violation of California law. The California Named Plaintiff's job duties were typical of those of other California Class members.

104. **Adequacy** (Fed. R. Civ. P. 23(a)(4))–The California Named Plaintiff will fairly

and adequately represent and protect the interests of the California Class members.

105. **Adequacy of counsel** (Fed. R. Civ. P. 23(g))–The California Named Plaintiff has retained counsel competent and experienced in complex class actions, the FLSA, and state labor and employment litigation. Plaintiffs' counsel have litigated numerous class actions on behalf of employees asserting overtime misclassification claims under the FLSA and state law. Plaintiffs' counsel intend to commit the necessary resources to prosecute this action vigorously for the benefit of all Class members.

106. **Predominance and superiority** (Fed. R. Civ. P 23(b)(3))–Class certification of the Second, Third, Fourth, Fifth, and Sixth Claims for Relief is appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the California Class predominate over any questions affecting only individual members of the California Class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. MHN's common and uniform policies and practices unlawfully treat California Class members as independent contractors exempt from overtime pay requirements. The damages suffered by individual California Class members are small compared to the expense and burden of individual prosecution of this litigation. In addition, class certification is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about MHN's practices.

107. **Notice** (Fed. R. Civ. P. 23(c)(2)(B))–The California Named Plaintiff intends to send notice to all California Class members consistent with the requirements of Fed. R. Civ. P. 23.

## HAWAII CLASS ACTION ALLEGATIONS

108. The Hawaii Named Plaintiff (Ms. Paddock) brings the Eighth Claim for Relief for violation of Hawaii's Wage and Hour Law as a class action, pursuant to Fed. R. Civ. P. 23(a) and (b)(3), on behalf of all Hawaii Class members, defined in paragraph 16.

109. **Numerosity** (Fed. R. Civ. P. 23(a)(1))–The Hawaii Class is so numerous that joinder of all members is impracticable. The Hawaii Named Plaintiff is informed and believes, and on that basis alleges, that during the Hawaii Class Period, MHN has employed at least fifty persons who satisfy the definition of the Hawaii Class.

110. **Commonality** (Fed. R. Civ. P. 23(a)(2))–Common questions of law and fact exist as to members of the Hawaii Class, including, but not limited to, the following:

a. Whether MHN unlawfully classified the Hawaii Class members as independent contractors;

b. Whether the Hawaii Class members are nonexempt employees entitled to

overtime compensation for overtime hours worked under the overtime pay requirements of Hawaii law;

c. Whether MHN unlawfully failed to pay overtime compensation in violation of the Haw. Rev. Stat. § 387-3;

d. Whether MHN's policy and practice of classifying the Hawaii Class members as independent contractors exempt from overtime entitlement under Hawaii law and MHN's policy and practice of failing to pay overtime to Hawaii Class members violate applicable provisions of Hawaii law, including applicable statutory and regulatory authority;

e. Whether liquidated damages should be awarded to the Hawaii Class members; and

f. The proper measure of damages sustained and recoverable by members of the Hawaii Class.

111. **Typicality** (Fed. R. Civ. P. 23(a)(3))–The Hawaii Named Plaintiff's claims are typical of Hawaii Class members' claims. The Hawaii Named Plaintiff, like other Hawaii Class members, was subjected to MHN's policy and practice of refusing to pay overtime in violation of Hawaii law. The Hawaii Named Plaintiff's job duties were typical of those of other Hawaii Class members.

112. **Adequacy** (Fed. R. Civ. P. 23(a)(4))–The Hawaii Named Plaintiff will fairly and

adequately represent and protect the interests of the Hawaii Class members.

113. **Adequacy of counsel** (Fed. R. Civ. P 23(g))–The Hawaii Named Plaintiff has retained counsel competent and experienced in complex class actions, the FLSA, and state labor and employment litigation. Plaintiffs' counsel have litigated numerous class actions on behalf of employees asserting overtime misclassification claims under the FLSA and state law. Plaintiffs' counsel intend to commit the necessary resources to prosecute this action vigorously for the benefit of all Class members.

114. **Predominance and superiority** (Fed. R. Civ. P. 23(b)(3))–Class certification of the Eighth Claim for Relief is appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the Hawaii Class predominate over any questions affecting only individual members of the Hawaii Class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. MHN's common and uniform policies and practices unlawfully treat Hawaii Class members as independent contractors exempt from overtime pay requirements. The damages suffered by individual Hawaii Class members are small compared to the expense and burden of individual prosecution of this litigation. In addition, class certification is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about MHN's practices.

115. **Notice** (Fed. R. Civ. P. 23(c)(2)(B))–The Hawaii Named Plaintiff intends to send notice to all Hawaii Class members consistent with the requirements of Fed. R. Civ. P. 23.

## KENTUCKY CLASS ACTION ALLEGATIONS

116. The Kentucky Named Plaintiffs (Ms. Dale and Ms. Paddock) bring the Ninth Claim for Relief for violation of Kentucky's wage and hour laws as a class action, pursuant to Fed. R. Civ. P 23(a) and (b)(3), on behalf of all Kentucky Class members, defined in paragraph 17.

117. **Numerosity** (Fed. R. Civ. P. 23(a)(1))–The Kentucky Class is so numerous that joinder of all members is impracticable. The Kentucky Named Plaintiffs are informed and believe, and on that basis allege, that during the Kentucky Class Period, MHN has employed at least fifty persons who satisfy the definition of the Kentucky Class.

118. **Commonality** (Fed. R. Civ. P 23(a)(2))–Common questions of law and fact exist as to members of the Kentucky Class, including, but not limited to, the following:

a. Whether MHN unlawfully classified the Kentucky Class members as independent contractors;

b. Whether the Kentucky Class members are nonexempt employees entitled to overtime compensation for overtime hours worked

under the overtime pay requirements of Kentucky law;

c. Whether MHN unlawfully failed to pay overtime compensation in violation of the Kentucky Wage Laws, KRS §§ 337.020, 337.060, & 337.285;

d. Whether MHN's policy and practice of classifying the Kentucky Class members as independent contractors exempt from overtime entitlement under Kentucky law and MHN's policy and practice of failing to pay overtime to Kentucky Class members violate applicable provisions of Kentucky law, including applicable statutory and regulatory authority;

e. Whether MHN failed to provide legally mandated meal and rest breaks to the Kentucky Class members, pursuant to KRS § 337.355 and KRS § 337.365;

f. Whether MHN unlawfully failed to keep and furnish Kentucky Class members with records of hours worked, in violation of the Kentucky Wage Laws, KRS §§ 337.070 & 337.320;

g. Whether liquidated damages should be awarded to the Kentucky Class members; and

h. The proper measure of damages sustained and recoverable by members of the Kentucky Class.

119. **Typicality** (Fed. R. Civ. P. 23(a)(3))–The Kentucky Named Plaintiffs' claims are typical of Kentucky Class members' claims. The Kentucky Named Plaintiffs, like other Kentucky Class members, were subjected to MHN's policy and practice of refusing to pay overtime in violation of Kentucky law. The Kentucky Named Plaintiffs' job duties were typical of those of other Kentucky Class members.

120. **Adequacy** (Fed. R. Civ. P 23(a)(4))–The Kentucky Named Plaintiffs will fairly and adequately represent and protect the interests of the Kentucky Class members.

121. **Adequacy of counsel** (Fed. R. Civ. P. 23(g))–The Kentucky Named Plaintiffs have retained counsel competent and experienced in complex class actions, the FLSA, and state labor and employment litigation. Plaintiffs' counsel have litigated numerous class actions on behalf of employees asserting overtime misclassification claims under the FLSA and state law. Plaintiffs' counsel intend to commit the necessary resources to prosecute this action vigorously for the benefit of all Class members.

122. **Predominance and superiority** (Fed. R. Civ. P. 23(b)(3))–Class certification of the Ninth Claim for Relief is appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the Kentucky Class predominate over any questions affecting only individual members of the Kentucky Class, and because a class action is superior to other available

methods for the fair and efficient adjudication of this litigation. MHN's common and uniform policies and practices unlawfully treat Kentucky Class members as independent contractors exempt from overtime pay requirements. The damages suffered by individual Kentucky Class members are small compared to the expense and burden of individual prosecution of this litigation. In addition, class certification is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about MHN's practices.

123. **Notice** (Fed. R. Civ. P. 23(c)(2)(B))–The Kentucky Named Plaintiffs intend to send notice to all Kentucky Class members consistent with the requirements of Fed. R. Civ. P. 23.

## NEVADA CLASS ACTION ALLEGATIONS

124. The Nevada Named Plaintiff (Mr. Zaborowski) brings the Tenth Claim for Relief for violation of Nevada's wage and hour laws as a class action, pursuant to Fed. R. Civ. P. 23(a) and (b)(3), on behalf of all Nevada Class members, defined in paragraph 18.

125. **Numerosity** (Fed. R. Civ. P 23(a)(1))–The Nevada Class is so numerous that joinder of all members is impracticable. The Nevada Named Plaintiff is informed and believes, and on that basis alleges, that during the Nevada Class Period, MHN has employed at least fifty persons who satisfy the definition of the Nevada Class.

126. **Commonality** (Fed. R. Civ. P. 23(a)(2))–Common questions of law and fact exist as to members of the Nevada Class, including, but not limited to, the following:

a. Whether MHN unlawfully classified the Nevada Class members as independent contractors;

b. Whether the Nevada Class members are nonexempt employees entitled to overtime compensation for overtime hours worked under the overtime pay requirements of Nevada law;

c. Whether MHN unlawfully failed to pay overtime compensation in violation of the Nevada Wage and Hour Law, Nev. Rev. Stat. § 608.018 & 608.260;

d. Whether MHN's policy and practice of classifying the Nevada Class members as independent contractors exempt from overtime entitlement under Nevada law and MHN's policy and practice of failing to pay overtime to Nevada Class members violate applicable provisions of Nevada law, including applicable statutory and regulatory authority;

e. Whether MHN's policy and practice of failing to pay its employees all wages due within the time required by law after their employment ended violates Nevada law; and

f. The proper measure of damages sustained and the proper measure of restitution recoverable by members of the Nevada Class.

127. **Typicality** (Fed. R. Civ. P 23(a)(3))–The Nevada Named Plaintiff's claims are typical of Nevada Class members' claims. The Nevada Named Plaintiff, like other Nevada Class members, was subjected to MHN's policy and practice of refusing to pay overtime in violation of Nevada law. The Nevada Named Plaintiff's job duties were typical of those of other Nevada Class members.

128. **Adequacy** (Fed. R. Civ. P. 23(a)(4))–The Nevada Named Plaintiff will fairly and adequately represent and protect the interests of the Nevada Class members.

129. **Adequacy of counsel** (Fed. R. Civ. P. 23(g))–The Nevada Named Plaintiff has retained counsel competent and experienced in complex class actions, the FLSA, and state labor and employment litigation. Plaintiffs' counsel have litigated numerous class actions on behalf of employees asserting overtime misclassification claims under the FLSA and state law. Plaintiffs' counsel intend to commit the necessary resources to prosecute this action vigorously for the benefit of all Class members.

130. **Predominance and superiority** (Fed. R. Civ. P. 23(b)(3))–Class certification of the Tenth Claim for Relief is appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the Nevada

Class predominate over any questions affecting only individual members of the Nevada Class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. MHN's common and uniform policies and practices unlawfully treat Nevada Class members as independent contractors exempt from overtime pay requirements. The damages suffered by individual Nevada Class members are small compared to the expense and burden of individual prosecution of this litigation. In addition, class certification is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about MHN's practices.

131. **Notice** (Fed. R. Civ. P. 23(c)(2)(B))–The Nevada Named Plaintiff intends to send notice to all Nevada Class members consistent with the requirements of Fed. R. Civ. P. 23.

## NEW MEXICO CLASS ACTION ALLEGATIONS

132. The New Mexico Named Plaintiff (Mr. Platt) brings the Eleventh Claim for Relief for violation of New Mexico's Wage and Hour Law as a class action, pursuant to Fed. R. Civ. P. 23(a) and (b)(3), on behalf of all New Mexico Class members, defined in paragraph 19.

133. **Numerosity** (Fed. R. Civ. P 23(a)(1))–The New Mexico Class is so numerous that joinder of all members is impracticable. The New Mexico Named Plaintiff is informed and believes, and on that basis alleges, that during the New Mexico Class Period, MHN has employed at least fifty

persons who satisfy the definition of the New Mexico Class.

134. **Commonality** (Fed. R. Civ. P. 23(a)(2))–Common questions of law and fact exist as to members of the New Mexico Class, including, but not limited to, the following:

a. Whether MHN unlawfully classified the New Mexico Class members as independent contractors;

b. Whether the New Mexico Class members are nonexempt employees entitled to overtime compensation for overtime hours worked under the overtime pay requirements of New Mexico law;

c. Whether MHN unlawfully failed to pay overtime compensation in violation of the N.M. Stat. Ann. § 50-4-22(C);

d. Whether MHN's policy and practice of classifying the New Mexico Class members as independent contractors exempt from overtime entitlement under New Mexico law and MHN's policy and practice of failing to pay overtime to New Mexico Class members violate applicable provisions of New Mexico law, including applicable statutory and regulatory authority;

e. Whether liquidated damages should be awarded to the New Mexico Class members; and

f. The proper measure of damages sustained and recoverable by members of the New Mexico Class.

135. **Typicality** (Fed. R. Civ. P. 23(a)(3))–The New Mexico Named Plaintiff's claims are typical of New Mexico Class members' claims. The New Mexico Named Plaintiff, like other New Mexico Class members, was subjected to MHN's policy and practice of refusing to pay overtime in violation of New Mexico law. The New Mexico Named Plaintiff's job duties were typical of those of other New Mexico Class members.

136. **Adequacy** (Fed. R. Civ. P. 23(a)(4))–The New Mexico Named Plaintiff will fairly and adequately represent and protect the interests of the New Mexico Class members.

137. **Adequacy of counsel** (Fed. R. Civ. P. 23(g))–The New Mexico Named Plaintiff has retained counsel competent and experienced in complex class actions, the FLSA, and state labor and employment litigation. Plaintiffs' counsel have litigated numerous class actions on behalf of employees asserting overtime misclassification claims under the FLSA and state law. Plaintiffs' counsel intend to commit the necessary resources to prosecute this action vigorously for the benefit of all Class members.

138. **Predominance and superiority** (Fed. R. Civ. P. 23(b)(3))–Class certification of the Eleventh Claim for Relief is appropriate under Fed. R. Civ. P. 23(b)(3) because

questions of law and fact common to the New Mexico Class predominate over any questions affecting only individual members of the New Mexico Class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. MHN's common and uniform policies and practices unlawfully treat New Mexico Class members as independent contractors exempt from overtime pay requirements. The damages suffered by individual New Mexico Class members are small compared to the expense and burden of individual prosecution of this litigation. In addition, class certification is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about MHN's practices.

139. **Notice** (Fed. R. Civ. P. 23(c)(2)(B))–The New Mexico Named Plaintiff intends to send notice to all New Mexico Class members consistent with the requirements of Fed. R. Civ. P. 23.

## NEW YORK CLASS ACTION ALLEGATIONS

140. The New York Named Plaintiffs (Ms. Howard and Mr. Platt) bring the Twelfth and Thirteenth Claims for Relief for violation of New York's Wage and Hour Law as a class action, pursuant to Fed. R. Civ. P. 23(a) and (b)(3), on behalf of all New York Class members, defined in paragraph 20.

141. **Numerosity** (Fed. R. Civ. P. 23(a)(1))–The New York Class is so numerous that joinder of all members is impracticable. The New York

Named Plaintiffs are informed and believe, and on that basis allege, that during the New York Class Period, MHN has employed at least fifty persons who satisfy the definition of the New York Class.

142. **Commonality** (Fed. R. Civ. P. 23(a)(2))–Common questions of law and fact exist as to members of the New York Class, including, but not limited to, the following:

a. Whether MHN unlawfully classified the New York Class members as independent contractors;

b. Whether the New York Class members are nonexempt employees entitled to overtime compensation for overtime hours worked under the overtime pay requirements of New York law;

c. Whether MHN unlawfully failed to pay overtime compensation in violation of New York Labor Law;

d. Whether MHN's policy and practice of classifying the New York Class members as independent contractors exempt from overtime entitlement under New York law and MHN's policy and practice of failing to pay overtime to New York Class members violate applicable provisions of New York law, including applicable statutory and regulatory authority;

e. Whether MHN had a policy and practice of failing and refusing to pay 'spread of hours'

compensation to the New York Named Plaintiffs and the New York Class members for their shifts of greater than ten hours; and

f. The proper measure of damages sustained and recoverable by members of the New York Class.

143. **Typicality** (Fed. R. Civ. P. 23(a)(3))–The New York Named Plaintiffs' claims are typical of New York Class members' claims. The New York Named Plaintiffs, like other New York Class members, were subjected to MHN's policy and practice of refusing to pay overtime in violation of New York law. The New York Named Plaintiffs' job duties were typical of those of other New York Class members.

144. **Adequacy** (Fed. R. Civ. P. 23(a)(4))–The New York Named Plaintiffs will fairly and adequately represent and protect the interests of the New York Class members.

145. **Adequacy of counsel** (Fed. R. Civ. P. 23(g))–The New York Named Plaintiffs have retained counsel competent and experienced in complex class actions, the FLSA, and state labor and employment litigation. Plaintiffs' counsel have litigated numerous class actions on behalf of employees asserting overtime misclassification claims under the FLSA and state law. Plaintiffs' counsel intend to commit the necessary resources to prosecute this action vigorously for the benefit of all Class members.

146. **Predominance and superiority** (Fed. R. Civ. P 23(b)(3))–Class certification of the Twelfth and Thirteenth Claims for Relief is appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the New York Class predominate over any questions affecting only individual members of the New York Class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. MHN's common and uniform policies and practices unlawfully treat New York Class members as independent contractors exempt from overtime pay requirements. The damages suffered by individual New York Class members are small compared to the expense and burden of individual prosecution of this litigation. In addition, class certification is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about MHN's practices.

147. **Notice** (Fed. R. Civ. P. 23(c)(2)(B))–The New York Named Plaintiffs intend to send notice to all New York Class members consistent with the requirements of Fed. R. Civ. P. 23.

## NORTH CAROLINA CLASS ACTION ALLEGATIONS

148. The North Carolina Named Plaintiff (Ms. Howard) brings the Fourteenth Claim for Relief for violation of North Carolina's Wage and Hour Law as a class action, pursuant to Fed. R. Civ.

P. 23(a) and (b)(3), on behalf of all North Carolina Class members, defined in paragraph 21.

149. **Numerosity** (Fed. R. Civ. P. 23(a)(1))–The North Carolina Class is so numerous that joinder of all members is impracticable. The North Carolina Named Plaintiff is informed and believes, and on that basis alleges, that during the North Carolina Class Period, MHN has employed at least fifty persons who satisfy the definition of the North Carolina Class.

150. **Commonality** (Fed. R. Civ. P. 23(a)(2))–Common questions of law and fact exist as to members of the North Carolina Class, including, but not limited to, the following:

a. Whether MHN unlawfully classified the North Carolina Class members as independent contractors;

b. Whether the North Carolina Class members are nonexempt employees entitled to overtime compensation for overtime hours worked under the overtime pay requirements of North Carolina law;

c. Whether MHN unlawfully failed to pay overtime compensation in violation of the NCWHA;

d. Whether MHN's policy and practice of classifying the North Carolina Class members as independent contractors exempt from overtime entitlement under North Carolina law and

MHN's policy and practice of failing to pay overtime to North Carolina Class members violate applicable provisions of North Carolina law, including applicable statutory and regulatory authority;

e. Whether liquidated damages should be awarded to the North Carolina Class members; and

f. The proper measure of damages sustained and recoverable by members of the North Carolina Class.

151. **Typicality** (Fed. R. Civ. P. 23(a)(3))–The North Carolina Named Plaintiff's claims are typical of North Carolina Class members' claims. The North Carolina Named Plaintiff, like other North Carolina Class members, was subjected to MHN's policy and practice of refusing to pay overtime in violation of North Carolina law. The North Carolina Named Plaintiff's job duties were typical of those of other North Carolina Class members.

152. **Adequacy** (Fed. R. Civ. P. 23(a)(4))–The North Carolina Named Plaintiff will fairly and adequately represent and protect the interests of the North Carolina Class members.

153. **Adequacy of counsel** (Fed. R. Civ. P. 23(g))–The North Carolina Named Plaintiff has retained counsel competent and experienced in complex class actions, the FLSA, and state labor and employment litigation. Plaintiffs' counsel have litigated numerous class actions on behalf of

employees asserting overtime misclassification claims under the FLSA and state law. Plaintiffs' counsel intend to commit the necessary resources to prosecute this action vigorously for the benefit of all Class members.

154. **Predominance and superiority** (Fed. R. Civ. P. 23(b)(3))–Class certification of the Fourteenth Claim for Relief is appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the North Carolina Class predominate over any questions affecting only individual members of the North Carolina Class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. MHN's common and uniform policies and practices unlawfully treat North Carolina Class members as independent contractors exempt from overtime pay requirements. The damages suffered by individual North Carolina Class members are small compared to the expense and burden of individual prosecution of this litigation. In addition, class certification is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about MHN's practices.

155. **Notice** (Fed. R. Civ. P. 23(c)(2)(B))–The North Carolina Named Plaintiff intends to send notice to all North Carolina Class members consistent with the requirements of Fed. R. Civ. P 23.

## FIRST CLAIM FOR RELIEF

**(Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, Brought by Plaintiffs on Behalf of Themselves and the Nationwide FLSA Plaintiffs)**

156. Plaintiffs, on behalf of themselves and all Nationwide FLSA Plaintiffs, reallege and incorporate by reference paragraphs 1 through 107 as if they were set forth again herein.

157. At all relevant times, MHN has been, and continues to be, an 'employer' engaged in interstate 'commerce' and/or in the production of 'goods' for 'commerce,' within the meaning of the FLSA, 29 U.S.C. § 203. At all relevant times, MHN has employed, and continues to employ, 'employee[s],' including Plaintiff and the Nationwide FLSA Plaintiffs. At all relevant times, MHN has had gross operating revenues in excess of $500,000.

158. Plaintiffs' signed Consent to Sue forms have been filed, pursuant to section 16(b) of the FLSA, 29 U.S.C. §§ 216(b) and 256. It is likely that other similarly situated individuals will sign consent forms and join as Plaintiffs in asserting this claim in the future.

159. The FLSA requires each covered employer, including MHN, to compensate all nonexempt employees at a rate of not less than one and one-half times the regular rate of pay for work performed in excess of forty hours in a workweek.

160. Under the FLSA, the Nationwide FLSA Plaintiffs are employees who are

entitled to be paid overtime compensation for all overtime hours worked.

161. At all relevant times, MHN, pursuant to its policies and practices, failed and refused to pay overtime premiums to the Nationwide FLSA Plaintiffs for their hours worked in excess of forty hours per week.

162. By failing to compensate Plaintiffs and the Nationwide FLSA Plaintiffs at a rate not less than one and one-half times the regular rate of pay for work performed in excess of forty hours in a workweek, MHN has violated, and continues to violate, the FLSA, 29 U.S.C. §§ 201 *et seq.*, including 29 U.S.C. § 207(a)(1) and § 215(a).

163. By failing to record, report, and/or preserve records of hours worked by Plaintiffs and the Nationwide FLSA Plaintiffs, MHN has failed to make, keep, and preserve records with respect to each of its employees sufficient to determine their wages, hours, and other conditions and practice of employment, in violation of the FLSA, 29 U.S.C. §§ 201 *et seq.*, including 29 U.S.C. § 211(c) and § 215(a).

164. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

165. Plaintiffs, on behalf of themselves and the Nationwide FLSA Plaintiffs, seek recovery of attorneys' fees and costs of action to be paid by MHN, as provided by the FLSA, 29 U.S.C. § 216(b).

166. Plaintiffs, on behalf of themselves and the Nationwide FLSA Plaintiffs, seek damages in the amount of unpaid overtime compensation, liquidated damages as provided by the FLSA, 29 U.S.C. § 216(b), interest, and such other legal and equitable relief as the Court deems just and proper.

**SECOND CLAIM FOR RELIEF**
**(Cal. Wage Order No. 4-2001; Cal. Labor Code §§ 510, 1194, Brought by the California Named Plaintiff on Behalf of Herself and the California Class)**

167. The California Named Plaintiff, on behalf of herself and all members of the California Class, realleges and incorporates by reference paragraphs 1 through 166 as if they were set forth again herein.

168. California law requires an employer, such as MHN, to pay overtime compensation to all nonexempt employees for all hours worked over forty per week, or over eight per day.

169. Under California law, the California Named Plaintiff and California Class members are nonexempt employees entitled to be paid overtime compensation for all overtime hours worked.

170. Throughout the California Class Period, and continuing through the present, the California Named Plaintiff and California Class members worked in excess of eight hours in a

workday and/or forty hours in a workweek. Certain California Class members also worked in excess of twelve hours in a workday.

171. During the California Class Period, MHN misclassified the California Named Plaintiff and California Class members as independent contractors, exempt from overtime pay entitlement, and failed and refused to pay them overtime premium pay for their overtime hours worked.

172. As a direct and proximate result of MHN's unlawful conduct, as set forth herein, the California Named Plaintiff and California Class members have sustained damages, including loss of earnings for hours of overtime worked on behalf of MHN in an amount to be established at trial, prejudgment interest, and costs and attorneys' fees, pursuant to statute and other applicable law.

**THIRD CLAIM FOR RELIEF**
**(California Wage Payment Provisions, Cal. Labor Code §§ 201, 202, & 203, Brought by the California Named Plaintiff on Behalf of Herself and the California Class)**

173. The California Named Plaintiff, on behalf of herself and the California Class members, realleges and incorporates by reference paragraphs 1 through 172 as if they were set forth again herein.

174. California Labor Code sections 201 and 202 require MHN to pay its employees all

wages due within the time specified by law. California Labor Code section 203 provides that if an employer willfully fails to timely pay such wages, the employer must continue to pay the subject employees' wages until the back wages are paid in full or an action is commenced, up to a maximum of thirty days of wages.

175. The California Named Plaintiff and all California Class members who ceased employment with MHN are entitled to unpaid compensation, but to date have not received such compensation.

176. More than thirty days have passed since The California Named Plaintiff and certain California Class members left MHN's employ.

177. As a consequence of MHN's willful conduct in not paying compensation for all hours worked, The California Named Plaintiff and California Class members whose employment ended during the class period are entitled to thirty days' wages under Labor Code section 203, together with interest thereon and attorneys' fees and costs.

**FOURTH CLAIM FOR RELIEF**
**(California Record-Keeping Provisions, Cal. Wage Order No. 4-2001; Cal. Labor Code §§ 226, 1174, & 1174.5, Brought by the California Named Plaintiff on Behalf of Herself and the California Class)**

178. The California Named Plaintiff, on behalf of herself and all members of the California Class, realleges and incorporates by reference paragraphs 1 through 177 as if they were set forth again herein.

179. MHN knowingly and intentionally failed to provide timely, accurate, itemized wage statements including, *inter alia*, hours worked, to The California Named Plaintiff and California Class members in accordance with Labor Code section 226(a) and the IWC Wage Orders. Such failure caused injury to The California Named Plaintiff and California Class members, by, among other things, impeding them from knowing the amount of wages to which they are and were entitled. At all times relevant herein, MHN has failed to maintain records of hours worked by The California Named Plaintiff and California Class members as required under Labor Code section 1174(d).

180. The California Named Plaintiff and California Class members are entitled to and seek injunctive relief requiring MHN to comply with Labor Code sections 226(a) and 1174(d), and further seek the amount provided under Labor Code sections 226(e) and 1174.5, including the greater of all actual damages or fifty dollars ($50) for the initial pay

period in which a violation occurred and one hundred dollars ($100) per employee for each violation in a subsequent pay period.

**FIFTH CLAIM FOR RELIEF**
**(California Meal And Rest Period Provisions, Cal. Wage Order No. 4-2001; Cal. Labor Code §§ 226.7 & 512, Brought by The California Named Plaintiff on Behalf of Herself and the California Class)**

181. The California Named Plaintiff, on behalf of herself and all members of the California Class, realleges and incorporates by reference paragraphs 1 through 180 as if they were set forth again herein.

182. The California Named Plaintiff and California Class members regularly work and have worked in excess of five-hour shifts without being afforded at least a half-hour meal break in which they were relieved of all duty and more than ten-hour shifts without being afforded a second half-hour meal break in which they were relieved of all duty, as required by Labor Code sections 226.7 and 512 and Wage Order No. 4-2001, section 11(a).

183. In addition, the California Named Plaintiff and California Class members regularly work and have worked without being afforded at least one ten-minute rest break, in which they were relieved of all duty, per four hours of work performed or major fraction thereof, as required by Labor Code section 226.7 and Wage Order No. 4-2001, section 12.

184. As a result of MHN's failure to afford proper meal periods, it is liable to the California Named Plaintiff and California Class members for one hour of additional pay at the regular rate of compensation for each workday that the proper meal periods were not provided, pursuant to Labor Code section 226.7 and Wage Order No. 4-2001, section 11(b).

185. As a result of MHN's failure to afford proper rest periods, it is liable to the California Named Plaintiff and California Class members for one hour of additional pay at the regular rate of compensation for each workday that the proper rest periods were not provided, pursuant to Labor Code section 226.7 and Wage Order No. 4-2001, section 12(b).

**SIXTH CLAIM FOR RELIEF**
**(California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, Brought by The California Named Plaintiff on Behalf of Herself and the California Class)**

186. The California Named Plaintiff, on behalf of herself and all members of the California Class, realleges and incorporates by reference paragraphs 1 through 185 as if they were set forth again herein.

187. The foregoing conduct, as alleged, violates the California Unfair Competition Law ('UCL'), Cal. Bus. & Prof. Code §§ 17200 *et seq.* Section 17200 of the Cal. Bus. & Prof. Code prohibits unfair competition by prohibiting, *inter alia*, any unlawful or unfair business acts or practices.

188. Within the four years before the filing of this action, MHN committed, and continues to commit, acts of unfair competition, as defined by the UCL, by, among other things, engaging in the acts and practices described herein. MHN's conduct as herein alleged has injured the California Named Plaintiff and California Class members by wrongfully denying them earned wages, and therefore was substantially injurious to the California Named Plaintiff and to California Class members.

189. MHN engaged in unfair competition in violation of the UCL by violating, *inter alia*, each of the following laws. Each of these violations constitutes an independent and separate violation of the UCL:

a. The Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*;

b. California Labor Code § 1194;

c. California Labor Code §§ 201, 202, 203, 226, 226.7, and 512;

d. California Labor Code § 1174; and

e. California Labor Code § 510, which provides in relevant part:

> Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be

> compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

190. MHN's course of conduct, acts, and practices in violation of the California laws mentioned in the above paragraph constitute a separate and independent violation of the UCL. MHN's conduct described herein violates the policy or spirit of such laws or otherwise significantly threatens or harms competition.

191. The unlawful and unfair business practices and acts of MHN, described above, have injured California Class members in that they were wrongfully denied the payment of earned overtime wages.

192. The California Named Plaintiff, on behalf of herself and the California Class, seeks restitution in the amount of the respective unpaid wages earned and due at a rate of at least one and one-half times the regular rate of pay for work performed in excess of forty hours in a workweek, or eight hours in a day, and double the regular rate of pay for work performed in excess of twelve hours per day.

193. The California Named Plaintiff, on behalf of herself and the California Class members, seeks recovery of attorneys' fees and costs of this action to be paid by MHN, as provided by the UCL and California Labor Code §§ 218, 218.5, and 1194.

**SEVENTH CLAIM FOR RELIEF**
**(California Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698-2699.5, Brought by the California Named Plaintiff on Behalf of Herself and All Aggrieved Employees)**

194. The California Named Plaintiff, on behalf of herself and all aggrieved employees, as well as on behalf of the general public of California, realleges and incorporates by reference paragraphs 1 through 193 as if they were set forth again herein.

195. Under the California Private Attorneys General Act ('PAGA') of 2004, Cal. Lab. Code §§ 2698-2699.5, an aggrieved employee, on behalf of herself and other current or former employees as well as the general public, may bring a representative action as a private attorney general to recover penalties for an employer's violations of the California Labor Code and IWC Wage Orders. These civil penalties are in addition to any other relief available under the California Labor Code, and must be allocated 75% to California's Labor and Workforce Development Agency ('LWDA') and 25% to the aggrieved employee, pursuant to California Labor Code § 2699.

196. The California Named Plaintiff alleges, on behalf of herself and all aggrieved

employees, as well as the general public, that MHN has violated the following provisions of the California Labor Code and the following provisions of the IWC Wage Orders that are actionable through the California Labor Code and PAGA, as previously alleged herein: Cal. Lab. Code §§ 201-03, 218.5, 226, 226.7, 226.8, 510, 512, 1174, 1174.5, and 1194, and IWC Wage Order No. 4-2001. Each of these violations entitles the California Named Plaintiff, as a private attorney general, to recover the applicable civil penalties on her own behalf, on behalf of all aggrieved employees, and on behalf of the general public.

197. California Labor Code § 2699(a), which is part of PAGA, provides in pertinent part:

> Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of themselves or herself and other current or former employees pursuant to the procedures specified in § 2699.3.

198. California Labor Code § 2699(f), which is part of PAGA, provides in pertinent part:

> For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: . . . (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation.

199. The California Named Plaintiff is entitled to civil penalties, to be paid by MHN and allocated as PAGA requires, pursuant to California Labor Code § 2699(a) for MHN's violations of the California Labor Code and IWC Wage Orders for which violations a civil penalty is already specifically provided by law. Furthermore, the California Named Plaintiff is entitled to civil penalties, to be paid by MHN and allocated as PAGA requires, pursuant to California Labor Code § 2699(f) for MHN's violations of the California Labor Code and IWC Wage Orders for which violations a civil penalty is not already specifically provided.

200. On January 30, 2013, the California Named Plaintiff provided written notice by certified mail to the LWDA of the legal claims and theories of this case contemporaneous with the filing of the First Amended Complaint in this action. The California Named Plaintiff simultaneously provided a copy of that notice by certified mail to MHN. As of

the date of filing of this complaint, Plaintiffs have not received a response from the LWDA. Because no notice has been 'provided within 33 calendar days of the postmark date of' Plaintiffs' January 30 letter, the California Named Plaintiff is entitled to assert this claim. Cal. Labor Code § 2699.3(a)(2).

201. Under PAGA, the California Named Plaintiff and the State of California are entitled to recover the maximum civil penalties permitted by law for the violations of the California Labor Code and IWC Wage Order No. 4-2001 that are alleged in this complaint.

**EIGHTH CLAIM FOR RELIEF**
**(Hawaii Wage and Hour Law, Haw. Rev. Stat. § 387-1 *et seq.*, Brought by the Hawaii Named Plaintiff on Behalf of Herself and the Hawaii Class)**

202. The Hawaii Named Plaintiff, on behalf of herself and all members of the Hawaii Class, realleges and incorporates by reference paragraphs 1 through 201 as if they were set forth again herein.

203. The foregoing conduct, as alleged, violates the Hawaii Wage and Hour Law, Haw. Rev. Stat. § 387-1 *et seq.*

204. At all relevant times, MHN has been, and continues to be, an 'employer' within the meaning of Haw. Rev. Stat. § 387-1. At all relevant times, MHN has employed, and continues to employ, employees, including the Hawaii Named Plaintiff and

each of the Hawaii Class members, within the meaning of Haw. Rev. Stat. § 387-1.

205. Haw. Rev. Stat. § 387-3 requires an employer, such as MHN, to pay overtime compensation to all nonexempt employees. Under Hawaii law, the Hawaii Named Plaintiff and the Hawaii Class members are employees who are not exempt from overtime pay requirements.

206. At all relevant times, Hawaii had a policy and practice of willfully failing and refusing to pay overtime pay to the Hawaii Named Plaintiff and the Hawaii Class members for their hours worked in excess of forty hours per week.

207. As a result of MHN's failure to pay wages earned and due, and its decision to withhold wages earned and due, to the Hawaii Named Plaintiff and Hawaii Class members at a rate of at least one and one-half times the regular rate of pay for work performed in excess of forty hours in a workweek, MHN has violated, and continues to violate, the Hawaii Wage and Hour Law.

208. The Hawaii Named Plaintiffs, on behalf of themselves and the Hawaii Class members, seek recovery of attorneys' fees and costs of this action to be paid by MHN, as provided by Hawaii law, Haw. Rev. Stat. § 388-11(c) and § 387-12(c).

209. The Hawaii Named Plaintiffs, on behalf of themselves and the Hawaii Class members, seek damages in the amount of the unpaid wages earned and due at a rate of at least one and one-half

times the regular rate of pay for work performed in excess of forty hours in a work week, as provided by Haw. Rev. Stat. § 387-3, interest under Haw. Rev. Stat. § 388-10(a) and § 388-11(c), liquidated damages under Haw. Rev. Stat. § 387-12(b), and such other legal and equitable relief from MHN's unlawful and willful conduct as the Court deems just and proper.

**NINTH CLAIM FOR RELIEF**
**(Kentucky Wage and Hour Laws, KRS § 337.010 *et seq.*, Brought by the Kentucky Named Plaintiffs on Behalf of Themselves and the Kentucky Class)**

210. The Kentucky Named Plaintiffs, on behalf of themselves and all members of the Kentucky Class, realleges and incorporates by reference paragraphs 1 through 209 as if they were set forth again herein.

211. The foregoing conduct, as alleged, violates the Kentucky Wage and Hour Laws, KRS § 337.010 *et seq.* ('the Kentucky Wage Laws').

212. At all relevant times, MHN has been, and continues to be, an 'employer' within the meaning of KRS § 337.010 and 803 Ky. Admin. Regs. 1:005 § 1(2). At all relevant times, MHN has employed, and continues to employ, employees, including the Kentucky Named Plaintiffs and each of the Kentucky Class members, within the meaning of KRS § 337.010 and 803 Ky. Admin. Regs. 1:005 § 4.

213. The Kentucky Wage Laws require an employer, such as MHN, to pay overtime

compensation to all nonexempt employees. Under Kentucky law, the Kentucky Named Plaintiffs and the Kentucky Class members are employees who are not exempt from overtime pay requirements.

214. At all relevant times, Kentucky had a policy and practice of willfully failing and refusing to pay overtime pay to the Kentucky Named Plaintiffs and the Kentucky Class members for their hours worked in excess of forty hours per week, in violation of the Kentucky Wage Laws, KRS §§ 337.020, 337.060, & 337.285.

215. As a result of MHN's failure to pay wages earned and due, and its decision to withhold wages earned and due, to the Kentucky Named Plaintiffs and the Kentucky Class members at a rate not less than one and one-half times the regular rate of pay for work performed in excess of forty hours in a workweek, MHN has violated, and continues to willfully violate, the Kentucky Wage Laws, KRS §§ 337.055, 337.060, & 337.285.

216. The Kentucky Named Plaintiffs and Kentucky Class members regularly work and have worked in excess of five-hour shifts without being afforded at least a half-hour meal break in which they were relieved of all duty. as required by KRS § 337.355.

217. In addition, the Kentucky Named Plaintiffs and Kentucky Class members regularly work and have worked without being afforded at least one ten-minute rest break, in which they were relieved of all duty, per four hours of work performed

or major fraction thereof, as required by KRS § 337.365.

218. As a result of MHN's failure to record, report, credit, and furnish to each of its MFLCs in Kentucky, including the Kentucky Named Plaintiffs and the Kentucky Class members, their respective wage and hour records showing all wages earned and due for all work performed, MHN has failed to make, keep, preserve, and furnish such records in violation of the Kentucky Wage Laws, KRS §§ 337.070 & 337.320.

219. The Kentucky Named Plaintiffs, on behalf of themselves and the Kentucky Class members, seek recovery of attorneys' fees and costs of this action to be paid by MHN, as provided by Kentucky law, KRS § 337.385(1).

220. The Kentucky Named Plaintiffs, on behalf of themselves and the Kentucky Class members, seek damages in the amount of the unpaid wages earned and due at a rate of at least one and one-half times the regular rate of pay for work performed in excess of forty hours in a work week, liquidated damages under KRS § 337.385(1), punitive damages, and such other legal and equitable relief from MHN's unlawful and willful conduct as the Court deems just and proper.

**TENTH CLAIM FOR RELIEF**
**(Nevada Wage and Hour Law, Nev. Rev. Stat. § 608.005 *et seq.* & § 612.005 *et seq.*, Brought by the Nevada Named Plaintiff on Behalf of Himself and the Nevada Class)**

221. The Nevada Named Plaintiff, on behalf of himself and all members of the Nevada Class, realleges and incorporates by reference paragraphs 1 through 220 as if they were set forth again herein.

222. The foregoing conduct, as alleged, violates Nevada wage and hour law, Nev. Rev. Stat. § 608.005 *et seq.*, Nev. Rev. Stat. § 612.005 *et seq.*, Nev. Rev. Stat. § 616A.005 *et seq.*, and Nev. Admin. Code § 608.050 *et seq.*

223. At all relevant times, MHN has been, and continues to be, an 'employer' within the meaning of Nev. Rev. Stat. § 608.011. At all relevant times, MHN has employed, and continues to employ, employees, including the Nevada Named Plaintiff and each of the Nevada Class members, within the meaning of Nev. Rev. Stat. § 612.085, Nev. Admin. Code § 608.155, and Nev. Rev. Stat. Sec. 616A.255.

224. Nev. Rev. Stat. § 608.018 & 608.260 requires an employer, such as MHN, to pay overtime compensation to all nonexempt employees. Under Nevada law, the Nevada Named Plaintiff and the Nevada Class members are employees who are not exempt from overtime pay requirements.

225. At all relevant times, Nevada had a policy and practice of willfully failing and refusing to pay overtime pay to the Nevada Named Plaintiff and the Nevada Class members for their hours worked in excess of forty hours per week.

226. As a result of MHN's failure to pay wages earned and due, and its decision to withhold wages earned and due, to the Nevada Named Plaintiff and Nevada Class members at a rate of at least one and one-half times the regular rate of pay for work performed in excess of forty hours in a workweek, MHN has violated, and continues to violate, the Nevada Wage and Hour Law.

227. Nev. Rev. Stat. § 608.050 requires MHN to pay its employees all wages due within the time specified by law. Nevada law provides that if an employer willfully fails to timely pay such wages, the employer must continue to pay the subject employees' wages until the back wages are paid in full or an action is commenced, up to a maximum of thirty days of wages.

228. The Nevada Named Plaintiff and all Nevada Class members who ceased employment with MHN are entitled to unpaid compensation, but to date have not received such compensation. More than thirty days have passed since the Nevada Named Plaintiff and certain of the Nevada Class members left MHN's employ.

229. The Nevada Named Plaintiffs, on behalf of themselves and the Nevada Class members, seek recovery of attorneys' fees and costs of this action to be paid by MHN, as provided by Nevada law, Nev. Rev. Stat. § 608.140.

230. The Nevada Named Plaintiffs, on behalf of themselves and the Nevada Class members, seek damages in the amount of the unpaid wages

earned and due at a rate of at least one and one-half times the regular rate of pay for work performed in excess of forty hours in a work week, as provided by Nev. Rev. Stat. § 608.018 & 608.260, and such other legal and equitable relief from MHN's unlawful and willful conduct as the Court deems just and proper.

**ELEVENTH CLAIM FOR RELIEF**
**(New Mexico Minimum Wage Act, N.M. Stat. Ann. § 50-4-19 *et seq.*, Brought by the New Mexico Named Plaintiff on Behalf of Himself and the New Mexico Class)**

231. The New Mexico Named Plaintiff, on behalf of himself and all members of the New Mexico Class, realleges and incorporates by reference paragraphs 1 through 230 as if they were set forth again herein.

232. The foregoing conduct, as alleged, violates the New Mexico Minimum Wage Act, N.M. Stat. Ann. § 50-4-19 *et seq.*

233. At all relevant times, MHN has been, and continues to be, an 'employer' within the meaning of N.M. Stat. Ann. § 50-4-21(B). At all relevant times, MHN has employed, and continues to employ, employees, including the New Mexico Named Plaintiff and each of the New Mexico Class members, within the meaning of N.M. Stat. Ann. § 50-4-21(C).

234. N.M. Stat. Ann. § 50-4-22(C) requires an employer, such as MHN, to pay overtime compensation to all nonexempt employees. Under

New Mexico law, the New Mexico Named Plaintiff and the New Mexico Class members are employees who are not exempt from overtime pay requirements.

235. At all relevant times, New Mexico had a policy and practice of willfully failing and refusing to pay overtime pay to the New Mexico Named Plaintiff and the New Mexico Class members for their hours worked in excess of forty hours per week.

236. As a result of MHN's failure to pay wages earned and due, and its decision to withhold wages earned and due, to the New Mexico Named Plaintiff and New Mexico Class members at a rate of at least one and one-half times the regular rate of pay for work performed in excess of forty hours in a workweek, MHN has violated, and continues to violate, the New Mexico Minimum Wage Act.

237. N.M. Stat. Ann. § 50-4-9 requires an employer, such as MHN, to maintain true and accurate records of hours worked and wages paid to each employee, including the New Mexico Named Plaintiff and the New Mexico Class members. Such records must be kept on file for at least one year. On information and belief, MHN has failed to maintain and keep such records in accordance with New Mexico law.

238. The New Mexico Named Plaintiff, on behalf of himself and the New Mexico Class members, seeks recovery of attorneys' fees and costs of this action to be paid by MHN, as provided

by New Mexico law, N.M. Stat. Ann. § 50-4-26(C), (D), & (E).

239. The New Mexico Named Plaintiff, on behalf of himself and the New Mexico Class members, seeks damages in the amount of the unpaid wages earned and due at a rate of at least one and one-half times the regular rate of pay for work performed in excess of forty hours in a work week, as provided by N.M. Stat. Ann. § 50-4-22(C), interest, liquidated damages under N.M. Stat. Ann. § 50-4-26(C), and such other legal and equitable relief from MHN's unlawful and willful conduct as the Court deems just and proper.

**TWELFTH CLAIM FOR RELIEF**
**(New York Labor Law, § 650 *et seq.*, § 190 *et seq.*, and 12 N.Y.C.R.R. Part 142, Brought by the New York Named Plaintiffs on Behalf of Themselves and the New York Class)**

240. The New York Named Plaintiffs, on behalf of themselves and all members of the New York Class, reallege and incorporate by reference paragraphs 1 through 239 as if they were set forth again herein.

241. The foregoing conduct, as alleged, violates the New York Minimum Wage Act, Labor Law § 650 *et seq.*, the New York Wage Payment Act, Labor Law § 190 *et seq.*, and the supporting Department of Labor Regulations, 12 N.Y.C.R.R. Part 142 (together, the 'New York Labor Law').

242. At all relevant times, MHN has been, and continues to be, an 'employer' within the

meaning of New York Labor Law § 651. At all relevant times, MHN has employed, and continues to employ, employees, including the New York Named Plaintiffs and each of the New York Class members, within the meaning of New York law.

243. The New York Labor Law requires an employer, such as MHN, to pay overtime compensation to all nonexempt employees. Under New York law, the New York Named Plaintiffs and the New York Class members are employees who are not exempt from overtime pay requirements.

244. At all relevant times, New York had a policy and practice of willfully failing and refusing to pay overtime pay to the New York Named Plaintiffs and the New York Class members for their hours worked in excess of forty hours per week.

245. As a result of MHN's failure to pay wages earned and due, and its decision to withhold wages earned and due, to the New York Named Plaintiffs and New York Class members at a rate of at least one and one-half times the regular rate of pay for work performed in excess of forty hours in a workweek, MHN has violated, and continues to violate, the New York Labor Law.

246. The New York Named Plaintiffs, on behalf of themselves and the New York Class members, seek recovery of attorneys' fees and costs of this action to be paid by MHN, as provided by New York Labor Law § 663(1).

247. The New York Named Plaintiffs, on behalf of themselves and the New York Class members, seek damages in the amount of the unpaid wages earned and due at a rate of at least one and one-half times the regular rate of pay for work performed in excess of forty hours in a work week, as provided by New York Labor Law § 663(1), and such other legal and equitable relief from MHN's unlawful and willful conduct as the Court deems just and proper.

**THIRTEENTH CLAIM FOR RELIEF**
**(Spread-of-Hours Compensation, New York Labor Law, Article 19 § 650 *et seq.* and Supporting New York State Department of Labor Regulations, Brought by the New York Named Plaintiffs on Behalf of Themselves and the New York Class)**

248. The New York Named Plaintiffs, on behalf of themselves and all members of the New York Class, reallege and incorporate by reference paragraphs 1 through 247 as if they were set forth again herein.

249. New York Named Plaintiffs and New York Class members worked shifts of greater than ten hours without receiving additional 'spread-of-hours' compensation from MHN.

250. The foregoing conduct, as alleged herein, violates the New York Labor Law, and the supporting New York State Department of Labor regulations, including the provisions requiring 'spread-of-hours' pay, which require an employer,

such as MHN, to pay additional 'spread-of-hours' compensation to employees who work shifts of greater than ten hours.

251. At all relevant times, MHN had a policy and practice of failing and refusing to pay 'spread of hours' compensation to the New York Named Plaintiffs and the New York Class members for their shifts of greater than ten hours.

252. As a result of MHN's failure to pay 'spread of hours' compensation to the New York Named Plaintiffs and the New York Class members for their shifts of greater than ten hours, MHN has violated, and continues to violate, the New York Labor Law.

253. The New York Named Plaintiffs, on behalf of themselves and the New York Class members, seek recovery of attorneys' fees and costs of this action to be paid by MHN, as provided by New York Labor Law § 663(1).

254. The New York Named Plaintiffs, on behalf of themselves and the New York Class members, seek the amount of underpayments based on MHN's failure to 'spread of hours' compensation to the New York Named Plaintiffs and the New York Class members for their shifts of greater than ten hours and such relief from MHN's unlawful and willful conduct as the Court deems just and proper.

**FOURTEENTH CLAIM FOR RELIEF**
**(North Carolina Wage and Hour Law, Haw. Rev. Stat. § 387-1 *et seq.*, Brought by the North**

**Carolina Named Plaintiff on Behalf of Herself and the North Carolina Class)**

255. The North Carolina Named Plaintiff, on behalf of herself and all members of the North Carolina Class, realleges and incorporates by reference paragraphs 1 through 254 as if they were set forth again herein.

256. The foregoing conduct, as alleged, violates N.C. Gen. Stat. § 95-25.1 *et seq.* (the 'North Carolina Wage and Hour Act' or 'NCWHA').

257. At all relevant times, MHN has been, and continues to be, an 'employer' within the meaning of the NCWHA, N.C. Gen. Stat. § 95-25.2(5). At all relevant times, MHN has employed, and continues to employ, employees, including the North Carolina Named Plaintiff and each of the North Carolina Class members, within the meaning of the NCWHA, N.C. Gen. Stat. § 95-25.2(4).

258. The NCWHA requires an employer, such as MHN, to pay overtime compensation to all nonexempt employees. Under North Carolina law, including N.C. Gen. Stat. § 95-25.6, the North Carolina Named Plaintiff and the North Carolina Class members are employees who are not exempt from overtime pay requirements.

259. At all relevant times, North Carolina had a policy and practice of willfully failing and refusing to pay overtime pay to the North Carolina Named Plaintiff and the North Carolina

Class members for their hours worked in excess of forty hours per week.

260. As a result of MHN's failure to pay wages earned and due, and its decision to withhold wages earned and due, to the North Carolina Named Plaintiff and North Carolina Class members at a rate of at least one and one-half times the regular rate of pay for work performed in excess of forty hours in a workweek, MHN has violated, and continues to violate, the NCWHA, N.C. Gen. Stat. §§ 95-25.6, 95-25.7, 95-25.7(A), 95-25.8, & 95-25.22.

261. As a result of MHN's failure to record, report, credit, and furnish to the North Carolina Named Plaintiff and the North Carolina Class members, their respective wage and hour records showing all wages earned and due for all work performed, MHN has failed to make, keep, preserve, and furnish such records in violation of N.C. Gen. Stat. §§ 95-25.13 & 95-25.15, and 13 N.C. Admin Code §§ 12.0801-12.0807.

262. The North Carolina Named Plaintiff, on behalf of herself and the North Carolina Class members, seeks recovery of attorneys' fees and costs of this action to be paid by MHN, pursuant to N.C. Gen. Stat. § 95-25.22(d).

263. The North Carolina Named Plaintiff, on behalf of herself and the North Carolina Class members, seeks damages in the amount of the unpaid wages earned and due at a rate of at least one and one-half times the regular rate of pay for work performed in excess of forty hours in a work week,

punitive damages, interest, liquidated damages, and such other legal and equitable relief from MHN's unlawful and willful conduct as the Court deems just and proper.

**FIFTEENTH CLAIM FOR RELIEF**
**(Declaratory Judgment, 28 U.S.C. §§ 2201-2202, Brought by Plaintiffs on Behalf of Themselves and the Class members)**

264. Plaintiffs, on behalf of themselves and all Class members, reallege and incorporate by reference paragraphs 1 through 230 as if they were set forth again herein.

265. The arbitration clause is included at the PSTOA, which is nine pages long. A true and correct copy of the PSTOA is attached hereto as Exhibit A. The clause consists of 18 sentences in a single dense paragraph (the 20th of 23 paragraphs in the PSTOA), spanning pages 7-8. The arbitration clause is not set aside visually, such as on a separate page, or in larger or bolded text. There is no requirement that the arbitration clause be separately signed or even initialed.

266. The arbitration clause seeks to strip Plaintiffs and all other MFLCs of federal and state statutory rights.

267. Plaintiffs seek declaratory judgment to avoid uncertainty, risk of damages, chilling effect, waiver of rights and other negative consequences caused by MHN's arbitration clause.

Declaratory judgment will serve a useful purpose in clarifying the parties' legal relations.

268. Absent the requested declaratory judgment, Plaintiffs and other MFLCs will suffer irreparable harm.

269. The issue of enforceability of MHN's mandatory arbitration clause is subject to declaratory judgment. *See Alders v. A.F.A. Corp.*, 353 F. Supp. 654, 657 (S.D. Fla. 1973), *aff'd without op.*, 490 F.2d 990 (5th Cir. 1974) (declaratory relief appropriate in determining the validity of a contract); *Central Hudson Gas. & Elec. Corp. v. Benjamin F. Shaw Co.*, 465 F. Supp. 331, 333 (S.D.N.Y. 1978) (declaratory relief appropriate to determine enforceability of binding arbitration provision).

270. Plaintiffs seek a declaratory judgment that MHN's mandatory arbitration clause is unconscionable and unenforceable.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all Class members nationwide, pray for relief as follows:

A. Declaratory judgment that MHN's arbitration clause is unenforceable.

WHEREFORE, Plaintiffs, on behalf of themselves and all members of the Nationwide FLSA Class, pray for relief as follows:

B. Designation of this action as a collective action on behalf of the Nationwide FLSA Plaintiffs (asserting FLSA claims) and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the FLSA Opt-In Class, apprising them of the pendency of this action, and permitting them to assert timely FLSA claims in this action by filing individual Consent to Sue forms pursuant to 29 U.S.C. § 216(b);

C. Designation of Plaintiffs as Representatives of the Nationwide FLSA Plaintiffs;

D. A declaratory judgment that the practices complained of herein are unlawful under the FLSA;

E. An award of damages, according to proof, including liquidated damages, to be paid by MHN;

F Costs of action incurred herein, including expert fees;

G. Attorneys' fees, including fees pursuant to 29 U.S.C. § 216;

H. Post-judgment interest, as provided by law; and

I. Such other legal equitable relief as this Court deems necessary, just, and proper.

WHEREFORE, each State Law Class Named Plaintiff, on behalf of him- or herself and all

State Law Class members he or she represents, prays for relief as follows:

J. Certification of this action as a class action on behalf of each State Law Class;

K. Designation of each State Law Class Named Plaintiff as Representative of the Class he or she seeks to represent;

L. Designation of Plaintiffs' counsel of record as Class Counsel for each State Law Class;

M. A declaratory judgment that the practices complained of herein are unlawful under applicable state law;

N. Appropriate injunctive and equitable relief, including an order enjoining MHN from continuing its unlawful practices;

O. Appropriate statutory penalties;

P. Appropriate civil penalties;

Q. An award of damages, liquidated damages, and restitution to be paid by MHN according to proof;[2]

R. Pre-judgment and post-judgment interest, as provided by law;

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[2] 2 However, the New York Named Plaintiffs do not seek liquidated damages under the New York Labor Law.

S. Such other injunctive and equitable relief as the Court may deem just and proper; and

T. Attorneys' fees and costs of suit, including expert fees and costs.

Respectfully submitted,

Dated: January 31, 2014 By: /s/ Allen Vaught
Allen Vaught

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*Attorneys for Plaintiffs and proposed Class members*

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a jury trial on all causes of action and claims with respect to which they have a right to jury trial.

Respectfully submitted,

Dated: January 31, 2014 By: /s/ Allen Vaught
Allen Vaught

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*Attorneys for Plaintiffs and proposed Class members*

CONSULTANT TASK ORDER—For Hourly Provider Services.

This Consultant Task Order ('CTO') is issued by MHN Government Services, Inc. ('MHN') to THOMAS M ZABOROWSKI ('Provider') (collectively, the 'Parties') under the terms and conditions of the Provider Services Task Order Agreement (the 'Agreement') executed between the Parties and in effect on the Date of Task Order Issuance below.

1. a. Consultant Task Order No.: 65044775 MHNGS Ref#: 55745
   b. Professional Provider Name: THOMAS M ZABOROWSKI
   c. Assignment Location: KS-FT. RILEY
   d. Assignment Start 5/31/2011
   e. Assignment End 8/5/2011
   f. Air Travel Departure Date:
   g. Air Travel Return Date:
   h. Lodging Authorization Yes
   Hotel Check in Date: 5/30/2011
   i. Rental Car Approved No
   j. CLIN:[FOR MHNGS USE ONLY]: 0001AB-CONUS-Labor Hours
   k. Hourly Rate: $45.00
   l. Approved Mileage Reimbursement: Yes
   m. Average Hours 50 Per Week
2. Date of Task Order Issuance: 5/9/2011
3. Issued Under MHNGS Contract No: 1406-04-07-CT-T-66523
4. Appendix A forms a part of this CTO and is attached hereto. Appendix A depicts the scope of the ordered Services and terms of payment.

5. All terms, conditions, policies and procedures of the MFLC Provider Manual and Quality Assurance Surveillance Plan form a part of the CTO.

6. The total Ceiling Price under this CTO is estimated to be $42,110.00, inclusive of labor and, if applicable, those non-labor expenses indicted below.

7 Included in this Total Ceiling Price, if indicated by a 'Yes', are the following Non-Labor components. A cost pool of Not-to-Exceed $11,960.00 is established for reimbursement of these non-labor expenses. Provider shall not exceed this Not-to-Exceed amount without prior approval of MHN:

| | |
|---|---|
| Yes | Per Diem (Meals & Incidental Expenses); and |
| Yes | Allowable out-of-pocket expenses (not included in Per Diem) |

8. If under this CTO no Air Travel is indicated and 'No' is marked for Rental Car, Hotel and/or Per Diem AND this is a USAREC assignment, refer to Appendix Paragraphs 5, 7, 8 and 16 for additional provisions.

9. The Total Ceiling Price is not intended to be a guarantee of payment or an approved allowed amount that the provider may bill under this CTO. Billing and payment are subject to all terms and conditions of the Provider Task Order Agreement, this CTO and the MFLC Provider Manual.

10. All non-labor expenses will be reimbursed to Provider at direct cost; no indirect costs (e.g. G&A), nor profit, will be applied to these billed expenses.

11. Prohibition on Organizational Conflict of Interest: By acceptance of, and performance under, this CTO, Provider agrees to fully comply with and be legally bound by, this clause. The Provider, for the full term of this CTO, shall not refer any military member, nor the member's family member(s), with whom the Provider has either provided counseling, or has otherwise come in contact, as result of this CTO, to the Provider's own private counseling practice, nor to any provider counseling practice in which the Provider has a personal, financial or other particular interest. Any violation of this clause shall constitute an express material breach of this Task Order and the Provider Services Task Order Agreement and shall be subject to immediate termination by MHN without further cause or advance notice.

12. By acceptance of this Task Order, I certify that I have not been debarred, suspended, proposed for debarment, or otherwise declared ineligible, excluded or disqualified by any state or federal department or agency from receiving a contract/subcontract; and I certify that I'm not listed in the Excluded Parties List System (EPLS) found at: http://www.epls.gov/.

13. Task Order Acceptance Process: MHN shall issue the CTO to Provider via email, using the email address Provider has submitted to Professional Relations. Upon receipt of the Task Order, Provider agrees to notify MHN within two (2) business days via email of the Provider's decision to 'decline' all Task Orders issued hereunder. If MHN does not receive such a written declination within two (2) business days, this shall constitute Provider's acceptance of the Task Order and Provider's agreement to performance thereunder.

**IN WITNESS WHEREOF, MHN hereto enters into this agreement on the effective date specified. MHN GOVERNMENT SERVICES, INC.**

By:
(Authorized Signature)

Title: John L. Roberts
Manager, Health Net Government & Specialty Services

CONSULTANT TASK ORDER
For Hourly Provider Services

APPENDIX A—Hourly Provider Services
TERMS AND LOCATION OF ASSIGNMENT
COVERED BY THIS CTO

1. **Responsibilities of Provider**: Upon acceptance of this CTO, Provider agrees to provide short term, situational, problem solving non-medical counseling Services in support of military personnel and their families at the location and for the time period specified below and in accordance with the Provider Services Task Order Agreement executed between MHN and Provider and all requirements, policies and procedures contained in the MFLC Provider Manual and the MFLC Quality Assurance Surveillance Program. By acceptance of this CTO Provider agrees to provide contracted services in full for the Assignment Period specified below. MHN reserves the right to replace Provider in the event Provider, as solely determined by MHN, is unable to complete the assignment in full.

2. **Responsibilities of MHN**: MHN shall appoint a supervisor that will be responsible for assignments and scheduling, oversight of Services, resolution of all issues, and address Provider's administrative concerns. The Provider will have access to the supervisor as well as the Director of Clinical Programs and, as needed, The Medical Director in order to

address clinically related issues. Note, however, that only authorized representatives of MHN's Contracts and/or Purchasing Departments have authority to make material changes (e.g. changes in price or performance period) to this CTO. MHN shall compensate Provider in accordance with the terms and conditions of the Provider Services Task Order Agreement and this Task Order.

3. **Assignment Period**: The Assignment Start Date and Assignment End Date as specified under paragraph 1(d) and 1(e) of this Agreement constitutes the Assignment Period.

4. **Termination of Assignment**: The Assignment shall terminate as of the End Date, the effective date of Termination of the Provider Services Task Order Agreement or the date upon which MHN or the Department of Defense ('DoD') determines in their sole discretion that the Provider's Services are not required, whichever occurs earlier. In the event the Provider does not initiate or complete the term of the assignment specified in this CTO for reasons including, but not limited to termination of the Agreement, termination of the assignment by MHN or the DoD, or the declination of the services of the Provider by the DoD, MHN shall only be responsible for reimbursing Provider for the prorated period of time actually worked by Provider. The Assignment may be terminated by MHN prior to the Assignment Start date in accordance with Section 4 of the Provider

Services Task Order Agreement. In the event that MHN cancels this assignment without cause less than five days prior to the Assignment Start Date specified under 1(d), MHN agrees to pay Provider the equivalent of one week's pay based on the Hourly Rate and Average Hours per Week specified under 1(k) and 1(m) respectively of this Task Order.

5. **Air Travel Dates**: Air travel is applicable if so specified under Paragraph 1(f) and 1(g) of this CTO. If applicable, unless mutually agreed upon by both parties, Provider will travel to the Assignment Location on or about the Air Travel Departure Date and return on or about Air Travel Return Date. If air travel is not authorized under Paragraph 1(f) and 1(g) of this CTO above, but this assignment is in support of USAREC, MHN may still authorize air travel as required during the fulfillment of this assignment. Air travel is arranged and paid for by MHN. Air travel expenses paid for by Provider are not reimbursable by MHN.

6. **Reimbursement for mileage when driving a privately owned vehicle (POV)**: Provider will receive reimbursement for mileage for business related travel as approved by MHN. Providers approved for MHN lodging will be reimbursed for mileage for one round trip from their residence to and from the assignment location or mileage reimbursement for a total of 500 miles traveled, whichever is lower. Providers commuting from home or personally arranged

lodging each day are eligible for mileage reimbursement if travel exceeds 50 miles one way as determined by MHN. Reimbursement shall be limited to the Internal Revenue Service mileage rate applicable on the respective days of business travel. Provider agrees that mileage for travel to and from MHN lodging and work each day is not reimbursable.

7. **Rental Cars**: If, as specified under Paragraph 1(i) of this CTO, Provider is approved for a rental car, MHN will arrange for Provider to obtain a rental car for approved business purposes. If a rental car is not authorized under Paragraph 1(i) of this CTO above, but this assignment is in support of USAREC, MHN may still authorize a car rental as required during the fulfillment of this assignment. Provider agrees that any related expenses incurred during personal time will not be reimbursed by MHN. Provider agrees that gas for travel to and from MHN lodging and work each day are not reimbursable. Provider agrees that the collision damage waiver and personal accident insurance will not be taken. Should the Provider elect to purchase Insurance, the full cost shall be the responsibility of the Provider. Additionally, Provider shall not be authorized to designate an additional driver on the company rental car unless the Provider is part of a car sharing arrangement established by MHN.

8. **Reimbursement for Mileage to and From Work**: Only if approved by MHN and indicated under Paragraph 1(l) of the CTO, Provider will receive reimbursement for mileage for travel to and from work. To be eligible for reimbursement, actual mileage must exceed 50 miles each way. Reimbursement shall be limited to the Internal Revenue Service mileage rate applicable on the respective days of travel to and from the assignment.

9. **Hotel and Lodging for Scheduled Overnight Stays**: If, as specified under Paragraph 1(h) of this CTO, MHN shall arrange and pay for all Hotel and Lodging services. If lodging is not authorized in Section 1(h) above, but this assignment is in support of USAREC, MHN may still authorize lodging if (i) the consultant is required to travel to a location other than the Assignment location noted in 1.(c) above, and (ii) when such travel requires an overnight stay. Hotel and Lodging expenses paid for by Provider for scheduled stays are not reimbursable by MHN.

10. **Unscheduled Overnight Stays**: As necessitated by special needs of the assignment and upon prior approval, Provider shall receive reimbursement for overnight lodging and associated meals. This provision is applicable for assignments for which Provider is not receiving a per diem and/or is pre-approved for scheduled Hotel or Lodging.

11. **Payment Rate**: The Provider shall be paid the Hourly Rate specified under Paragraph 1(k) of this CTO. Provider will be paid for only those services performed in accordance with the MFLC Provider Manual and accepted by MHN.

12. **Payment Terms**: Provider will be paid the Hourly Rate for the Professional Provider stated under Paragraph 1(b) for approved hours worked. Provider shall not bill or receive reimbursement for scheduled time during the Assignment Period not worked as a result of holidays, planned or unplanned time-off taken by the Provider or a reduction in the Provider's schedule by the DoD for whatever reason or no reason. Provider is not eligible for compensatory time-off with pay without the express approval of the MHN appointed supervisor. If services provided under this CTO are in support of a Purple Camp or DoDEA Camp, payment will be subject to a Payment Cap as described below

    (a) Purple Camp Payment Cap: The Payment Cap shall be derived by multiplying the number of approved days worked over the course of the assignment times 12 hours times the Hourly Rate.

    (b) DoDEA Camp Payment Cap: Provider will be paid the Hourly Rate for approved hours worked not to exceed 50 hours per 7 consecutive calendar days. Under no circumstances may Provider bill nor will Provider receive an amount greater than

the Payment Cap. It is the responsibility of the Provider to monitor their hours worked under the Purple Camp and DoDEA Camp programs so as not to exceed the maximum number of hours allowed for reimbursement.

13. **Weekly Schedule**: Provider agrees to be available the Average Hours Per Week specified under Paragraph 1(m) of this CTO. Work will routinely be scheduled during normal business hours, but may include evenings and weekends. Provider may be required to provide some form of on call support for surge or redeployment activities.

14. **Invitation Travel Orders**: For assignments outside the U.S., Provider will receive Invitational Travel Orders (ITOs) issued by the Department of Defense. The ITO will serve as Provider's authorization to be on the military installations at the Assignment Locations. Provider may also be issued a military identification card. Provider agrees to carry the ITO, passport and military ID card, if issued, at all times while in the country of Assignment Location. Provider shall return the military identification card to their supervisor if one is issued.

15. **Per Diem**: Payment of Per Diem is applicable to this assignment if indicated by an [X] under Paragraph 7 (a) of this CTO. If applicable, the Provider shall be paid the prevailing daily Meals and Incidental Expenses (M&IE) Per Diem rate as applicable to the Assignment

Location specified under Paragraph 1(c) of this CTO. The intent is that Per Diem is paid in lieu of reimbursement of actual costs of meals and incidental expenses.

(a) For Continental United States 'CONUS' performance: In accordance with (IAW) the Federal Travel Regulations (FTR), issued by the General Services Administration.

(b) For Outside the Continental United States 'OCONUS' performance (excluding Alaska, Hawaii and Guam): IAW Section 925, Supplement to Standardized Regulations, issued by the U.S. Dept. of State.

(c) For Alaska, Hawaii, and Guam: In accordance with the Joint Travel Regulations (JTR), Vol. 2, issued by the Dept. of Defense.

16. **Per Diem**: If this CTO is in support of a USAREC Assignment, and lodging is not authorized in Section 1.h. above, Per Diem will be allowed for those days during the Assignment when: (i) the consultant is authorized by MHN to travel to a location other than the Assignment location noted in 1.(c) above, and (ii) when such travel requires an overnight stay. Travel to other locations not requiring an overnight stay will not be afforded Per Diem allowance.

17. **Per Diem Payment**: If Per Diems are applicable to this CTO, the Per Diem rate is

paid seven days of the week for every day of the Assignment Period. An amount equal to 75% of one day's Per Diem will be paid for one travel day prior to the start of the Assignment and an amount equal to 75% of one day's Per Diem will be paid for one travel day after the end of the Assignment. Except for these two travel days, Per Diem payment does not apply to personal days that occur prior to or following the Assignment Period specified above. The applicable per diem to the Assignment location can be viewed via the following web site: http://www.defensetravel.dod.mil/perdiem/perdiemrates.html

18. **Invoice and Expense Submissions.** Provider is required to submit invoices and expense reports every other week, for partial delivery of services, at the end of each billing period in which the services were performed. For each CTO, the invoice and expense report must separately breakout billings for each Professional Provider and any related and allowed business expenses. At a minimum, all invoices must include the following details in order to be consider properly prepared and submitted:

    (1) Date of Invoice.

    (2) CTO Number and name of Professional Provider performing the service.

    (3) Amount billed in accordance with directions specified in the CTO for the

applicable Services that the Provider is billing.

(4) Total amount claimed by Provider for the biweekly billing period.

(5) Dates for the biweekly period for which services are being billed.

(6) Copies of receipts for all expenses for which reimbursement is claimed

Provider will submit invoice and expense report to MHN no later than two (2) business days after the end of the biweekly period for which payment is requested in accordance with the billing scheduled provided in the orientation materials and included in the MFLC Provider Manual.

MHN payment on properly prepared and submitted Provider biweekly invoice will be determined on the basis of the pro rata portion of Assignment completed during the biweekly period and the reimbursable and approved expenses claimed for the same biweekly period.

19. **Final invoice**: Provider expressly acknowledges its understanding and agreement, that a Final Invoice must be submitted within thirty (30) calendar days from the Assignment Period End Date as set forth in the CTO, in order to be considered timely submitted. Such Final Invoice shall be so marked, and shall include all previously unbilled amounts, if any. In the event that Provider fails to submit a timely Final Invoice, MHN shall consider the last invoice

submitted by Provider, under the respective CTO, as the Provider's Final Invoice, and once paid by MHN, no further amounts will be considered due nor owed the Provider, and MHN shall have no obligation for further payments. Notwithstanding the foregoing, in the event that MHN denies an invoice submitted after the 30-day deadline on the basis that it was not submitted timely, upon demonstration by Provider of good cause for the delay through the provider dispute resolution process specified in the MFLC Provider Manual, MHN will adjudicate the invoice as if it were timely submitted.

20. **Right of Set-off**: In relation to any collection and payment of monies owed by Provider to MHN, MHN shall have the right, after the 45th calendar day following MHN's submission of the reimbursement request to Provider or after Provider's appeal rights have been exhausted, to set-off any payments owed to Provider against any funds owing by Provider to MHN, provided that MHN submits to Provider an explanation in writing in sufficient details so that Provider can reconcile each invoice.

CONSULTANT TASK ORDER—Fixed Price Services.

This Consultant Task Order ('CTO') is issued by MHN Government Services, Inc. ('MHN') to THOMAS M ZABOROWSKI ('Provider') (collectively, the 'Parties') under the terms and conditions of the Provider Services Task Order Agreement (the 'Agreement') executed between the Parties and in effect on the Date of Task Order Issuance below.

1. a. Consultant Task Order No.: 65037432 MHNGS Ref#: 37266
   b. Professional Provider Name: THOMAS M ZABOROWSKI
   c. Assignment Location: KS-FT. RILEY
   d. Assignment Start 11/19/2010
   e. Assignment End 1/2/2011
   f. Air Travel Departure Date:
   g. Air Travel Return Date:
   h. Lodging Authorization Yes
   Hotel Check in Date: 11/18/2010
   i. Rental Car Approved No
   j. CLIN:[FOR MHNGS USE ONLY]: 0003AA-CONUS-45-Day Rotation
   k. Fixed Price: $12,850.00
   l. Approved Mileage Reimbursement: Yes
2. Date of Task Order Issuance: 10/1/2010
3. Issued Under MHNGS Contract No: 1406-04-07-CT-T-66523
4. Appendix A forms a part of this CTO and is attached hereto. Appendix A depicts the scope of the ordered Services and terms of payment.

5. All terms, conditions, policies and procedures of the MFLC Provider Manual and Quality Assurance Surveillance Plan form a part of the CTO.

6. The total Ceiling Price under this CTO is estimated to be $21,082.00, inclusive of labor and, if applicable, those non-labor expenses indicted below.

7. Included in this Total Ceiling Price, if indicated by a 'Yes', are the following Non-Labor components. A cost pool of Not-to-Exceed $8,232.00 is established for reimbursement of these non-labor expenses. Provider shall not exceed this Not-to-Exceed amount without prior approval of MHN:

| | |
|---|---|
| Yes | Per Diem (Meals & Incidental Expenses); and |
| Yes | Allowable out-of-pocket expenses (not included in Per Diem) |

8. If under this CTO no Air Travel is indicated and 'No' is marked for Rental Car, Hotel and/or Per Diem AND this is a USAREC assignment, refer to Appendix Paragraphs 5, 7, 8 and 15 for additional provisions.

9. The Total Ceiling Price is not intended to be a guarantee of payment or an approved allowed amount that the provider may bill under this CTO. Billing and payment are subject to all terms and conditions of the Provider Task Order Agreement, this CTO and the MFLC Provider Manual.

10. All non-labor expenses will be reimbursed to Provider at direct cost; no indirect costs (e.g. G&A), nor profit, will be applied to these billed expenses.

11. Prohibition on Organizational Conflict of Interest: By acceptance of, and performance under, this CTO, Provider agrees to fully comply with and be legally bound by, this clause. The Provider, for the full term of this CTO, shall not refer any military member, nor the member's family member(s), with whom the Provider has either provided counseling, or has otherwise come in contact, as result of this CTO, to the Provider's own private counseling practice, nor to any provider counseling practice in which the Provider has a personal, financial or other particular interest. Any violation of this clause shall constitute an express material breach of this Task Order and the Provider Services Task Order Agreement and shall be subject to immediate termination by MHN without further cause or advance notice.

12. By acceptance of this Task Order, I certify that I have not been debarred, suspended, proposed for debarment, or otherwise declared ineligible, excluded or disqualified by any state or federal department or agency from receiving a contract/subcontract; and I certify that I'm not listed in the Excluded Parties List System (EPLS) found at: http://www.epls.gov/.

13. Task Order Acceptance Process: MHN shall issue the CTO to Provider via email, using the email address Provider has submitted to Professional Relations. Upon receipt of the Task Order, Provider agrees to notify MHN within two (2) business days via email of the Provider's decision to 'decline' all Task Orders issued hereunder. If MHN does not receive such a written declination within two (2) business days, this shall constitute Provider's acceptance of the Task Order and Provider's agreement to performance thereunder.

IN WITNESS WHEREOF, MHN hereto enters into this agreement on the effective date specified. MHN GOVERNMENT SERVICES, INC.

By: _____

(Authorized Signature)

Title: John L. Roberts

Manager, Health Net Government & Specialty Services

Date: _____

CONSULTANT TASK ORDER
For Fixed Price Provider Services

APPENDIX A—Fixed Price Provider Services
TERMS AND LOCATION OF ASSIGNMENT
COVERED BY THIS CTO

1. **Responsibilities of Provider**: Upon acceptance of this CTO, Provider agrees to provide short term, situational, problem solving non-medical counseling Services in support of military personnel and their families at the location and for the time period specified below and in accordance with the Provider Services Task Order Agreement executed between MHN and Provider and all requirements, policies and procedures contained in the MFLC Provider Manual and the MFLC Quality Assurance Surveillance Program. By acceptance of this CTO Provider agrees to provide contracted services in full for the Assignment Period specified below. MHN reserves the right to replace Provider in the event Provider, as solely determined by MHN, is unable to complete the assignment in full.

2. **Responsibilities of MHN**: MHN shall appoint a supervisor that will be responsible for assignments and scheduling, oversight of Services, resolution of all issues, and address Provider's administrative concerns. The Provider will have access to the supervisor as well as the Director of Clinical Programs and, as needed, The Medical Director in order to

address clinically related issues. Note, however, that only authorized representatives of MHN's Contracts and/or Purchasing Departments have authority to make material changes (e.g. changes in price or performance period) to this CTO. MHN shall compensate Provider in accordance with the terms and conditions of the Provider Services Task Order Agreement and this Task Order.

3. **Assignment Period**: The Assignment Start Date and Assignment End Date as specified under paragraph 1(d) and 1(e) of this Agreement constitutes the Assignment Period.

4. **Termination of Assignment**: The Assignment shall terminate as of the End Date, the effective date of Termination of the Provider Services Task Order Agreement or the date upon which MHN or the Department of Defense ('DoD') determines in their sole discretion that the Provider's Services are not required, whichever occurs earlier. In the event the Provider does not initiate or complete the term of the assignment specified in this CTO for reasons including, but not limited to termination of the Agreement, termination of the assignment by MHN or the DoD, or the declination of the services of the Provider by the DoD, MHN shall only be responsible for reimbursing Provider for the prorated period of time actually worked by Provider. The Assignment may be terminated by MHN prior to the Assignment Start date in accordance with Section 4 of the Provider

Services Task Order Agreement. In the event that MHN cancels this assignment without cause less than five days prior to the Assignment Start Date, MHN agrees to pay Provider the equivalent of one week's pay based on the Weekly Schedule and payment methodology specified under this Task Order.

5. **Air Travel Dates**: Air travel is applicable if so specified under Paragraph 1(f) and 1(g) of this CTO. If applicable, unless mutually agreed upon by both parties, Provider will travel to the Assignment Location on or about the Air Travel Departure Date and return on or about Air Travel Return Date. If air travel is not authorized under Paragraph 1(f) and 1(g) of this CTO above, but this assignment is in support of USAREC, MHN may still authorize air travel as required during the fulfillment of this assignment. Air travel is arranged and paid for by MHN. Air travel expenses paid for by Provider are not reimbursable by MHN.

6. **Reimbursement for mileage when driving a privately owned vehicle (POV)**: Provider will receive reimbursement for mileage for business related travel as approved by MHN. Providers approved for MHN lodging will be reimbursed for mileage for one round trip from their residence to and from the assignment location or mileage reimbursement for a total of 500 miles traveled, whichever is lower. Providers commuting from home or personally arranged lodging each day are eligible for mileage

reimbursement if travel exceeds 50 miles one way as determined by MHN. Reimbursement shall be limited to the Internal Revenue Service mileage rate applicable on the respective days of business travel. Provider agrees that mileage for travel to and from MHN lodging and work each day is not reimbursable.

7. **Rental Cars**: If, as specified under Paragraph 1(i) of this CTO, Provider is approved for a rental car, MHN will arrange for Provider to obtain a rental car for approved business purposes. If a rental car is not authorized under Paragraph 1(i) of this CTO above, but this assignment is in support of USAREC, MHN may still authorize a car rental as required during the fulfillment of this assignment. Provider agrees that any related expenses incurred during personal time will not be reimbursed by MHN. Provider agrees that gas for travel to and from MHN lodging and work each day are not reimbursable. Provider agrees that the collision damage waiver and personal accident insurance will not be taken. Should the Provider elect to purchase insurance, the full cost shall be the responsibility of the Provider. Additionally, Provider shall not be authorized to designate an additional driver on the company rental car.

8. **Hotel and Lodging for Scheduled Overnight Stays**: If, as specified under Paragraph 1(h) of this CTO, MHN shall arrange and pay for all Hotel and Lodging

services. If lodging is not authorized in Section 1(h) above, but this assignment is in support of USAREC, MHN may still authorize lodging if (i) the consultant is required to travel to a location other than the Assignment location noted in 1.(c) above, and (ii) when such travel requires an overnight stay. Hotel and Lodging expenses paid for by Provider for scheduled stays are not reimbursable by MHN.

9. **Unscheduled Overnight Stays**: As necessitated by special needs of the assignment and upon prior approval, Provider shall receive reimbursement for overnight lodging and associated meals. This provision is applicable for assignments for which Provider is not receiving a per diem and/or is pre-approved for scheduled

10. **Payment Rate**: The Provider shall be paid a Fixed Price specified under Paragraph 1(k) of this CTO. Provider will be paid for only those services performed in accordance with the MFLC Provider Manual and accepted by MHN.

11. **Fixed Price**: Provider will be paid the Fixed Price for the Professional Provider stated under Paragraph 1(b) for the satisfactory performance hereunder. The Fixed Price is not of the time and materials or labor hour type, but rather is a firm fixed price for the Assignment Period specified hereunder. In the event, that Provider performs less than the full services contracted during a standard

workweek for reasons other than a federally recognized holiday, MHN reserves the right to prorate the provider's payment accordingly. Provider is not eligible for compensatory time-off with pay without the express approval of the MHN appointed supervisor. This provision is not intended to connote a time and materials arrangement, but a method by which to adjust payment when actual performance is less than the level of services contracted.

12. **Weekly Schedule**: Work will routinely be scheduled for 40 hours per week during normal business hours, but may include evenings and weekends. Provider may be required to provide some form of on call support.

13. **Invitation Travel Orders**: For assignments outside the U.S., Provider will receive Invitational Travel Orders (ITOs) issued by the Department of Defense. The ITO will serve as Provider's authorization to be on the military installations at the Assignment Locations. Provider may also be issued a military identification card. Provider agrees to carry the ITO, passport and military ID card, if issued, at all times while in the country of Assignment Location. Provider shall return the military identification card to their supervisor if one is issued.

14. **Per Diem**: Payment of Per Diem is applicable to this assignment if indicated by a 'Yes' under Paragraph 7 (a) of this CTO. If

applicable, the Provider shall be paid the prevailing daily Meals and Incidental Expenses (M&IE) Per Diem rate as applicable to the Assignment Location specified under Paragraph 1(c) of this CTO. The intent is that Per Diem is paid in lieu of reimbursement of actual costs of meals and incidental expenses.

(a) For Continental United States 'CONUS' performance: In accordance with (IAW) the Federal Travel Regulations (FTR), issued by the General Services Administration.

(b) For Outside the Continental United States 'OCONUS' performance (excluding Alaska, Hawaii and Guam): IAW Section 925, Supplement to Standardized Regulations, issued by the U.S. Dept. of State.

(c) For Alaska, Hawaii, and Guam: In accordance with the Joint Travel Regulations (JTR), Vol. 2, issued by the Dept. of Defense.

15. **Per Diem**: If this CTO is in support of a USAREC Assignment, and lodging is not authorized in Section 1.h. above, Per Diem will be allowed for those days during the Assignment when: (i) the consultant is authorized by MHN to travel to a location other than the Assignment location noted in 1(c) above, and (ii) when such travel requires an overnight stay. Travel to other locations not requiring an overnight stay will not be afforded Per Diem allowance.

16. **Per Diem Payment**: If Per Diems are applicable to this CTO, the Per Diem rate is paid seven days of the week for every day of the Assignment Period. An amount equal to 75% of one day's Per Diem will be paid for one travel day prior to the start of the Assignment and an amount equal to 75% of one day's Per Diem will be paid for one travel day after the end of the Assignment. Except for these two travel days, Per Diem payment does not apply to personal days that occur prior to or following the Assignment Period specified above. The applicable per diem to the Assignment location can be viewed via the following web site: http://www.defensetravel.dod.mil/perdiem/perdiemrates.html

17. **Invoice and Expense Submissions**. Provider is required to submit invoices and expense reports every other week, for partial delivery of services, at the end of each billing period in which the services were performed. For each CTO, the invoice and expense report must separately breakout billings for each Professional Provider and any related and allowed business expenses. At a minimum, all invoices must include the following details in order to be consider properly prepared and submitted:

    (1) Date of Invoice.
    (2) CTO Number and name of Professional Provider performing the service.

(3) Amount billed in accordance with directions specified in the CTO for the applicable Services that the Provider is billing.

(4) Total amount claimed by Provider for the biweekly billing period.

(5) Dates for the biweekly period for which services are being billed.

(6) Copies of receipts for all expenses for which reimbursement is claimed

Provider will submit invoice and expense report to MHN no later than two (2) business days after the end of the biweekly period for which payment is requested in accordance with the billing scheduled provided in the orientation materials and included in the MFLC Provider Manual.

MHN payment on properly prepared and submitted Provider biweekly invoice will be determined on the basis of the pro rata portion of Assignment completed during the biweekly period and the reimbursable and approved expenses claimed for the same biweekly period.

18. **Final invoice**: Provider expressly acknowledges its understanding and agreement, that a Final Invoice must be submitted within thirty (30) calendar days from the Assignment Period End Date as set forth in the CTO, in order to be considered timely submitted. Such Final Invoice shall be so marked, and shall include all previously unbilled amounts, if any. In the event that Provider fails to submit a timely Final

Invoice, MHN shall consider the last invoice submitted by Provider, under the respective CTO, as the Provider's Final Invoice, and once paid by MHN, no further amounts will be considered due nor owed the Provider, and MHN shall have no obligation for further payments. Notwithstanding the foregoing, in the event that MHN denies an invoice submitted after the 30-day deadline on the basis that it was not submitted timely, upon demonstration by Provider of good cause for the delay through the provider dispute resolution process specified in the MFLC Provider Manual, MHN will adjudicate the invoice as if it were timely submitted.

19. **Right of Set-off**: In relation to any collection and payment of monies owed by Provider to MHN, MHN shall have the right, after the 45th calendar day following MHN's submission of the reimbursement request to Provider or after Provider's appeal rights have been exhausted, to set-off any payments owed to Provider against any funds owing by Provider to MHN, provided that MHN submits to Provider an explanation in writing in sufficient details so that Provider can reconcile each invoice.

CONSULTANT TASK ORDER—For Hourly Provider Services.

This Consultant Task Order ('CTO') is issued by MHN Government Services, Inc. ('MHN') to THOMAS M ZABOROWSKI ('Provider') (collectively, the 'Parties') under the terms and conditions of the Provider Services Task Order Agreement (the 'Agreement') executed between the Parties and in effect on the Date of Task Order Issuance below.

1. a. Consultant Task Order No.: 65038802
   MHNGS Ref#: 47668
   b. Professional Provider Name: THOMAS M ZABOROWSKI
   c. Assignment Location: KS-FT. RILEY
   d. Assignment Start 5/12/2011
   e. Assignment End 5/20/2011
   f. Air Travel Departure Date:
   g. Air Travel Return Date:
   h. Lodging Authorization Yes
   Hotel Check in Date: 5/12/2011
   i. Rental Car Approved No
   j. CLIN:[FOR MHNGS USE ONLY]: 0001AB-CONUS-Labor Hours
   k. Hourly Rate: $50.00
   l. Approved Mileage Reimbursement: Yes
   m. Average Hours 40 Per Week
2. Date of Task Order Issuance: 10/28/2010
3. Issued Under MHNGS Contract No: 1406-04-07-CT-T-66523
4. Appendix A forms a part of this CTO and is attached hereto. Appendix A depicts the scope of the ordered Services and terms of payment.

5. All terms, conditions, policies and procedures of the MFLC Provider Manual and Quality Assurance Surveillance Plan form a part of the CTO.

6. The total Ceiling Price under this CTO is estimated to be $6,573.00, inclusive of labor and, if applicable, those non-labor expenses indicted below.

7. Included in this Total Ceiling Price, if indicated by a 'Yes', are the following Non-Labor components. A cost pool of Not-to-Exceed $2,073.00 is established for reimbursement of these non-labor expenses. Provider shall not exceed this Not-to-Exceed amount without prior approval of MHN:

| | |
|---|---|
| Yes | Per Diem (Meals & Incidental Expenses); and |
| Yes | Allowable out-of-pocket expenses (not included in Per Diem) |

8. If under this CTO no Air Travel is indicated and 'No' is marked for Rental Car, Hotel and/or Per Diem AND this is a USAREC assignment, refer to Appendix Paragraphs 5, 7, 8 and 16 for additional provisions.

9. The Total Ceiling Price is not intended to be a guarantee of payment or an approved allowed amount that the provider may bill under this CTO. Billing and payment are subject to all terms and conditions of the Provider Task Order Agreement, this CTO and the MFLC Provider Manual.

10. All non-labor expenses will be reimbursed to Provider at direct cost; no indirect costs (e.g. G&A), nor profit, will be applied to these billed expenses.

11. Prohibition on Organizational Conflict of Interest: By acceptance of, and performance under, this CTO, Provider agrees to fully comply with and be legally bound by, this clause. The Provider, for the full term of this CTO, shall not refer any military member, nor the member's family member(s), with whom the Provider has either provided counseling, or has otherwise come in contact, as result of this CTO, to the Provider's own private counseling practice, nor to any provider counseling practice in which the Provider has a personal, financial or other particular interest. Any violation of this clause shall constitute an express material breach of this Task Order and the Provider Services Task Order Agreement and shall be subject to immediate termination by MHN without further cause or advance notice.

12. By acceptance of this Task Order, I certify that I have not been debarred, suspended, proposed for debarment, or otherwise declared ineligible, excluded or disqualified by any state or federal department or agency from receiving a contract/subcontract; and I certify that I'm not listed in the Excluded Parties List System (EPLS) found at: http://www.epls.gov/.

13. Task Order Acceptance Process: MHN shall issue the CTO to Provider via email, using the email address Provider has submitted to Professional Relations. Upon receipt of the Task Order, Provider agrees to notify MHN within two (2) business days via email of the Provider's decision to 'decline' all Task Orders issued hereunder. If MHN does not receive such a written declination within two (2) business days, this shall constitute Provider's acceptance of the Task Order and Provider's agreement to performance thereunder.

IN WITNESS WHEREOF, MHN hereto enters into this agreement on the effective date specified. MHN GOVERNMENT SERVICES, INC.
By:
(Authorized Signature)
Title: John L. Roberts
Manager, Health Net Government & Specialty Services

CONSULTANT TASK ORDER
For Hourly Provider Services

APPENDIX A—Hourly Provider Services
TERMS AND LOCATION OF ASSIGNMENT
COVERED BY THIS CTO

1. **Responsibilities of Provider**: Upon acceptance of this CTO, Provider agrees to provide short term, situational, problem solving non-medical counseling Services in support of military personnel and their families at the location and for the time period specified below and in accordance with the Provider Services Task Order Agreement executed between MHN and Provider and all requirements, policies and procedures contained in the MFLC Provider Manual and the MFLC Quality Assurance Surveillance Program. By acceptance of this CTO Provider agrees to provide contracted services in full for the Assignment Period specified below. MHN reserves the right to replace Provider in the event Provider, as solely determined by MHN, is unable to complete the assignment in full.

2. **Responsibilities of MHN**: MHN shall appoint a supervisor that will be responsible for assignments and scheduling, oversight of Services, resolution of all issues, and address Provider's administrative concerns. The Provider will have access to the supervisor as well as the Director of Clinical Programs and, as needed, The Medical Director in order to

address clinically related issues. Note, however, that only authorized representatives of MHN's Contracts and/or Purchasing Departments have authority to make material changes (e.g. changes in price or performance period) to this CTO. MHN shall compensate Provider in accordance with the terms and conditions of the Provider Services Task Order Agreement and this Task Order.

3. **Assignment Period**: The Assignment Start Date and Assignment End Date as specified under paragraph 1(d) and 1(e) of this Agreement constitutes the Assignment Period.

4. **Termination of Assignment**: The Assignment shall terminate as of the End Date, the effective date of Termination of the Provider Services Task Order Agreement or the date upon which MHN or the Department of Defense ('DoD') determines in their sole discretion that the Provider's Services are not required, whichever occurs earlier. In the event the Provider does not initiate or complete the term of the assignment specified in this CTO for reasons including, but not limited to termination of the Agreement, termination of the assignment by MHN or the DoD, or the declination of the services of the Provider by the DoD, MHN shall only be responsible for reimbursing Provider for the prorated period of time actually worked by Provider. The Assignment may be terminated by MHN prior to the Assignment Start date in accordance with Section 4 of the Provider

Services Task Order Agreement. In the event that MHN cancels this assignment without cause less than five days prior to the Assignment Start Date specified under 1(d), MHN agrees to pay Provider the equivalent of one week's pay based on the Hourly Rate and Average Hours per Week specified under 1(k) and 1(m) respectively of this Task Order.

5. **Air Travel Dates**: Air travel is applicable if so specified under Paragraph 1(f) and 1(g) of this CTO. If applicable, unless mutually agreed upon by both parties, Provider will travel to the Assignment Location on or about the Air Travel Departure Date and return on or about Air Travel Return Date. If air travel is not authorized under Paragraph 1(f) and 1(g) of this CTO above, but this assignment is in support of USAREC, MHN may still authorize air travel as required during the fulfillment of this assignment. Air travel is arranged and paid for by MHN. Air travel expenses paid for by Provider are not reimbursable by MHN.

6. **Reimbursement for mileage when driving a privately owned vehicle (POV)**: Provider will receive reimbursement for mileage for business related travel as approved by MHN. Providers approved for MHN lodging will be reimbursed for mileage for one round trip from their residence to and from the assignment location or mileage reimbursement for a total of 500 miles traveled, whichever is lower. Providers commuting from home or personally arranged

lodging each day are eligible for mileage reimbursement if travel exceeds 50 miles one way as determined by MHN. Reimbursement shall be limited to the Internal Revenue Service mileage rate applicable on the respective days of business travel. Provider agrees that mileage for travel to and from MHN lodging and work each day is not reimbursable.

7. **Rental Cars**: If, as specified under Paragraph 1(i) of this CTO, Provider is approved for a rental car, MHN will arrange for Provider to obtain a rental car for approved business purposes. If a rental car is not authorized under Paragraph 1(i) of this CTO above, but this assignment is in support of USAREC, MHN may still authorize a car rental as required during the fulfillment of this assignment. Provider agrees that any related expenses incurred during personal time will not be reimbursed by MHN. Provider agrees that gas for travel to and from MHN lodging and work each day are not reimbursable. Provider agrees that the collision damage waiver and personal accident insurance will not be taken. Should the Provider elect to purchase Insurance, the full cost shall be the responsibility of the Provider. Additionally, Provider shall not be authorized to designate an additional driver on the company rental car unless the Provider is part of a car sharing arrangement established by MHN.

8. **Reimbursement for Mileage to and From Work**: Only if approved by MHN and indicated under Paragraph 1(l) of the CTO, Provider will receive reimbursement for mileage for travel to and from work. To be eligible for reimbursement, actual mileage must exceed 50 miles each way. Reimbursement shall be limited to the Internal Revenue Service mileage rate applicable on the respective days of travel to and from the assignment.

9. **Hotel and Lodging for Scheduled Overnight Stays**: If, as specified under Paragraph 1(h) of this CTO, MHN shall arrange and pay for all Hotel and Lodging services. If lodging is not authorized in Section 1(h) above, but this assignment is in support of USAREC, MHN may still authorize lodging if (i) the consultant is required to travel to a location other than the Assignment location noted in 1.(c) above, and (ii) when such travel requires an overnight stay. Hotel and Lodging expenses paid for by Provider for scheduled stays are not reimbursable by MHN.

10. **Unscheduled Overnight Stays**: As necessitated by special needs of the assignment and upon prior approval, Provider shall receive reimbursement for overnight lodging and associated meals. This provision is applicable for assignments for which Provider is not receiving a per diem and/or is pre-approved for scheduled Hotel or Lodging.

11. **Payment Rate**: The Provider shall be paid the Hourly Rate specified under Paragraph 1(k) of this CTO. Provider will be paid for only those services performed in accordance with the MFLC Provider Manual and accepted by MHN.

12. **Payment Terms**: Provider will be paid the Hourly Rate for the Professional Provider stated under Paragraph 1(b) for approved hours worked. Provider shall not bill or receive reimbursement for scheduled time during the Assignment Period not worked as a result of holidays, planned or unplanned time-off taken by the Provider or a reduction in the Provider's schedule by the DoD for whatever reason or no reason. Provider is not eligible for compensatory time-off with pay without the express approval of the MHN appointed supervisor. If services provided under this CTO are in support of a Purple Camp or DoDEA Camp, payment will be subject to a Payment Cap as described below.

    (a) Purple Camp Payment Cap: The Payment Cap shall be derived by multiplying the number of approved days worked over the course of the assignment times 12 hours times the Hourly Rate.

    (b) DoDEA Camp Payment Cap: Provider will be paid the Hourly Rate for approved hours worked not to exceed 50 hours per 7 consecutive calendar days. Under no circumstances may Provider bill nor will Provider receive an amount greater than

the Payment Cap. It is the responsibility of the Provider to monitor their hours worked under the Purple Camp and DoDEA Camp programs so as not to exceed the maximum number of hours allowed for reimbursement.

13. **Weekly Schedule**: Provider agrees to be available the Average Hours Per Week specified under Paragraph 1(m) of this CTO. Work will routinely be scheduled during normal business hours, but may include evenings and weekends. Provider may be required to provide some form of on call support for surge or redeployment activities.

14. **Invitation Travel Orders**: For assignments outside the U.S., Provider will receive Invitational Travel Orders (ITOs) issued by the Department of Defense. The ITO will serve as Provider's authorization to be on the military installations at the Assignment Locations. Provider may also be issued a military identification card. Provider agrees to carry the ITO, passport and military ID card, if issued, at all times while in the country of Assignment Location. Provider shall return the military identification card to their supervisor if one is issued.

15. **Per Diem**: Payment of Per Diem is applicable to this assignment if indicated by an [X] under Paragraph 7 (a) of this CTO. If applicable, the Provider shall be paid the prevailing daily Meals and Incidental Expenses (M&IE) Per Diem rate as applicable to the Assignment

Location specified under Paragraph 1(c) of this CTO. The intent is that Per Diem is paid in lieu of reimbursement of actual costs of meals and Incidental expenses.

(a) For Continental United States 'CONUS' performance: In accordance with (IAW) the Federal Travel Regulations (FTR), issued by the General Services Administration.

(b) For Outside the Continental United States 'OCONUS' performance (excluding Alaska, Hawaii and Guam): IAW Section 925, Supplement to Standardized Regulations, issued by the U.S. Dept. of State.

(c) For Alaska, Hawaii, and Guam: In accordance with the Joint Travel Regulations (JTR), Vol. 2, issued by the Dept. of Defense.

16. **Per Diem**: If this CTO is in support of a USAREC Assignment, and lodging is not authorized in Section 1.h. above, Per Diem will be allowed for those days during the Assignment when: (i) the consultant is authorized by MHN to travel to a location other than the Assignment location noted in 1.(c) above, and (ii) when such travel requires an overnight stay. Travel to other locations not requiring an overnight stay will not be afforded Per Diem allowance.

17. **Per Diem Payment**: If Per Diems are applicable to this CTO, the Per Diem rate is

paid seven days of the week for every day of the Assignment Period. An amount equal to 75% of one day's Per Diem will be paid for one travel day prior to the start of the Assignment and an amount equal to 75% of one day's Per Diem will be paid for one travel day after the end of the Assignment. Except for these two travel days, Per Diem payment does not apply to personal days that occur prior to or following the Assignment Period specified above. The applicable per diem to the Assignment location can be viewed via the following web site: http://www.defensetravel.dod.mil/perdiem/perdiemrates.html

18. **Invoice and Expense Submissions.** Provider is required to submit invoices and expense reports every other week, for partial delivery of services, at the end of each billing period in which the services were performed. For each CTO, the invoice and expense report must separately breakout billings for each Professional Provider and any related and allowed business expenses. At a minimum, all invoices must include the following details in order to be consider properly prepared and submitted:

    (1) Date of Invoice.

    (2) CTO Number and name of Professional Provider performing the service.

    (3) Amount billed in accordance with directions specified in the CTO for the

applicable Services that the Provider is billing.

(4) Total amount claimed by Provider for the biweekly billing period.

(5) Dates for the biweekly period for which services are being billed.

(6) Copies of receipts for all expenses for which reimbursement is claimed

Provider will submit invoice and expense report to MHN no later than two (2) business days after the end of the biweekly period for which payment is requested in accordance with the billing scheduled provided in the orientation materials and included in the MFLC Provider Manual.

MHN payment on properly prepared and submitted Provider biweekly invoice will be determined on the basis of the pro rata portion of Assignment completed during the biweekly period and the reimbursable and approved expenses claimed for the same biweekly period.

19. **Final invoice**: Provider expressly acknowledges its understanding and agreement, that a Final Invoice must be submitted within thirty (30) calendar days from the Assignment Period End Date as set forth in the CTO, in order to be considered timely submitted. Such Final Invoice shall be so marked, and shall include all previously unbilled amounts, if any. In the event that Provider fails to submit a timely Final Invoice, MHN shall consider the last invoice submitted by Provider, under the respective

CTO, as the Provider's Final Invoice, and once paid by MHN, no further amounts will be considered due nor owed the Provider, and MHN shall have no obligation for further payments. Notwithstanding the foregoing, in the event that MHN denies an invoice submitted after the 30-day deadline on the basis that it was not submitted timely, upon demonstration by Provider of good cause for the delay through the provider dispute resolution process specified in the MFLC Provider Manual, MHN will adjudicate the invoice as if it were timely submitted.

20. **Right of Set-off**: In relation to any collection and payment of monies owed by Provider to MHN, MHN shall have the right, after the 45th calendar day following MHN's submission of the reimbursement request to Provider or after Provider's appeal rights have been exhausted, to set-off any payments owed to Provider against any funds owing by Provider to MHN, provided that MHN submits to Provider an explanation in writing in sufficient details so that Provider can reconcile each invoice.

MHN

GOVERNMENT SERVICES

# MILTARY AND FAMILY LIFE CONSULTING SERVICES (MFLC)

## PROVIDER MANUAL

July 15, 2011

Version 6.11

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MILITARY AND FAMILY CONSULTING SERVICES (MFLC) MANUAL

## SECTION 1—BACKGROUND AND CURRENT STATUS OF MILITARY AND FAMILY CONSULTING SERVICES (MFLC) PROGRAM

### 1.1 General Overview of MFLC Program

The Department of Defense (DoD) has long recognized that service to our nation places a heavy demand on families. DoD is committed to supporting military families and recognized an emerging need to provide informal support to Service members and their families in addition to the existing counseling support services at military installations, Thus DoD established a program to provide short term, situational, problem-solving non-medical counseling services. This non-medical counseling is designed to address issues that occur specifically within the military lifestyle and help Service members and their families cope with the normal reactions to the stressful/adverse situations created by deployments and reintegration. For some of the younger Service Members and especially those who are newly married, the stresses may occur as part of military living and the potential of deployment and support services may help solidify their relationship.

The MFLC program was piloted under the name Military Family Life Consultant in 2004 to meet a specific need of providing support to families of extended 1st Armored Division Soldiers. The success of the program in United States Army Europe

(USAREUR) has resulted in the expansion of MFLC services DoD wide for all Military Services CONUS and OCONUS and National Guard and the Reserve Component. Since May 2006, the Office of Family Policy (OFP) has contract oversight and each Service has a designated Point of Contact (POC). The MFLC program delivery may vary in the military services to meet specific needs and mission requirements; however all program delivery must remain within the scope of care and the Office of the Secretary of Defense (OSD) contract.

The majority of the MFLC positions are rotational, up to 90 days. There are some non-rotational positions as well as the 'Coaching for Young Families' pilot program initiative that will be a one-year time limited initiative. The OSD contract in collaboration with the services and MHN Government Services (MHN) remains flexible to ensure services are provided when and where they are needed, and to especially serve National Guard and Reserve Component Service Members and their families who often feel isolated and do not live near military installations.

The MFLC program is an OSD contract intended to augment existing military support services and meet emerging needs for the active duty, National Guard and Reserve Component Service Members and their families through the cycles of deployment and reintegration back to their families and communities.

**1. 2 Service Delivery and Scope**

The consultant program assists Service Members and families in dealing with relationships, crisis intervention, stress management, family issues,

parent-child communications, family separations as well as reunions and reintegration due to deployments. The consultant program will also assist military members and families who are volunteering their support for military communities and families (i.e., Family Readiness Group Leaders, Family Support Volunteers). This consultant program is an integral part of military and family support programs that are targeted to assure that personal and family issues do not detract from operational readiness, to strengthen individuals by assisting them in the problem-solving process and to increase individual and family member competencies and confidence in the ability to handle the stressors of military life. Addressing those issues impacting ability to function places Service Members and their families in a better position to deal with the stresses they are experiencing.

Psycho-education is provided to Service Members and their families to help them understand the impact of stress, deployments, family reunions following deployments and the stresses of the military lifestyle. The educational goal is to teach Service Members and their families how to anticipate and deal with problems such as deployment stress, how to recognize the signs of potential impact on personal functioning and when to obtain medical assistance. Consultants provide psycho-educational presentations as requested for installation based services and National Guard and Reserve Component drill weekends and family events. Consultants use military and contractor approved presentations.

- Counseling services are delivered by licensed clinical practitioners who are credentialed by MHN.

- Service delivery may be provided both on and off the military installations within the civilian community, but it will not be provided in military Medical Treatment Facilities (MTFs). ). MFLCs will not meet in a residence unless it is for a meeting (such as a support group or presentation to spouses) held at an individual's residence. As a rule of thumb, *MFLCs must not meet in a client's home.*
- Counseling services consist of face-to-face counseling, outreach/awareness services and educational services provided on a short-term rotational basis to meet the need.
- Consultants provide clients with non-medical problem identification counseling services. Services can be delivered in individual, couple, family and group counseling settings to address relationships, crisis intervention, stress management, grief after loss, occupational and other individual and family issues requiring problem solving assistance. Types of counseling and psycho-educational group topics include but are not limited to:

**Life Skills:**
Anger management
Assertiveness/Communication
Conflict resolution
Decision making
Parenting
Parent/child communication
Self esteem/confidence
Social issues
School/Work grades
Values/Life meaning

**Military Lifestyle:**
Deployment stress
Relational problems
Emotional well being
Individuation/Sense of self
Loss and grief
Coping skills
Separation
Homesickness
Relocation adjustment
Reintegration
Relationship Issues

- All groups must be psycho-educational. Consultants cannot facilitate therapeutic groups or provide therapy.
- With the exception of mandatory state, federal and military reporting requirements (i.e., domestic violence, child abuse, and duty to warn situations) this problem-solving counseling is private and confidential to encourage the widest level of participation.
- Situations meeting the diagnostic criteria for the most common mental disorders found in the Diagnostic and Statistical Manual of Mental Disorders - Fourth Edition (DSM-IV) must be referred to military medical mental health care providers, TRICARE or other providers of professional mental health care.
- Counseling support will also be provided through referral for up to twelve sessions throughout the United States to meet the needs of the Service Members and family members (within 30

minutes of where the family lives). Service Members and family members can call the toll free number directly (888-774-1361) to obtain a referral.

- OSD has partnered with Department of Defense Education
  Association (DoDEA) to provide MFLC services in the DoDEA schools to children, staff and parents.
- MFLC consultants are licensed professional clinical practitioners and can provide a variety of services to include but not limited to meeting the planes of returning Service Members, attending Family Readiness Group meetings, assisting Child and Youth Program and DoDEA staff and children, working with chaplains, attending and presenting at Welcome events (INDOCs) and Town Hall meetings, etc.
- MFLC consultants are sponsored by Service installation designated POCs who will ensure that the consultant can access installation facilities.
- The majority of the services are provided as outreach and 'walk around' counseling support.

**1.3 Eligibility and Program Limitations**

U.S. troops and family members and individuals on the installation or military-sponsored off-site event are eligible for MFLC services. However, military members or their dependents who are actively being seen through military Social Work Services, Behavioral Health Clinic, Mental Health Clinic, Family Advocacy Program or Sexual Assault Response Coordinator (SARC) are described as being 'in the system.' Service Members who are in the system must seek services from the military program with which he or she is already involved. Additionally if a client is involved in any investigation being conducted by the Military Police (MPs), Judge Advocate General (JAG) or the Command this individual is 'in the system '. Those currently in the system (that is, currently working with Behavioral Health, Chaplain, etc) must seek services from the military program with which they are already involved. (**Note that this does not apply to those who have been specifically referred for additional non-medical support *by the program with which they are working.)*

Note that persons who are currently undergoing investigation or have been involved in any investigation conducted by the Military Police (MPs), Judge Advocate General (JAG) or the Command within the last six months are also considered 'in the system'. However, this does not include Air Force Personnel For Air Force, those who have been under investigation at any time are considered 'off limits' for MFLC services. *Remember that potential clients should be advised of our parameters prior to any consultation.*

### 1.4 MFLC Consultant Role and Responsibilities

Every formal contact should result in an action plan to address the presenting issues. Consultants are not working as traditional therapists and should not use clinical and diagnostic terminology. Further, because this is a consulting (rather than therapist) role, licensure in the state of assignment is not required for offsite consultations.

#### 1.4.1 Consultant Primary Role

- Informally assess the needs of the individual, family or group seeking services
- Facilitate venting/story-telling
- Provide support
- Assist with identifying options
- Offer skill-building tools
- Assist with problem-solving
- Provide brief interventions utilizing a short-term, solution-focused approach
- Suggest appropriate resources
- Provide coaching

#### 1.4.2 Additional duties

- Conducting briefings about the MFLC program to commands and spouse support groups.
- Providing educational presentations on topics such as conflict resolution, grief, stress, parenting, pre-deployment, reunion and reintegration issues.
- Attending Family Readiness Group (FRG) meetings and other support meetings.
- Providing outreach to key military personnel to establish relationships and describe the program.

- Providing management consultations and support to Command representatives on personnel issues.
- Providing support for In-processing and Out-processing activities.
- Attend command or department staff meetings, Town Hall meetings.

### 1.4.3 On-Call Duties

Consultants are prohibited from assuming on-call procedures normally provided by Medical, Life Skills or Family Advocacy, as consultants are not credentialed for this type of duty. Consultants may be called upon to assist with surge activities. If on call duties are required the Area Coordinator (AC) and/or Army Community Services Officer (ACSO) will advise the consultant and outline the appropriate procedures.

### 1.4.4 Primary Issues

Consultants will encounter a variety of issues, but most are related to the impact of multiple deployments. Stressors associated with deployment can exacerbate typical family and relationship problems.

Issues may include:
- Grief and loss
- Anger issues
- Relationship issues with spouse and children
- Adjustment challenges associated with residing in a foreign country

- Stress related symptoms
- Adjustment issues related to deployment and/or returning from 'down range'
- Child and adolescent issues such as:
    - Stress regarding separation from parent/s
    - Concerns regarding safety of parent/s

### 1.4.5 Action Plans

An essential goal of MFLC service is to assist the Service Member and/or family members in developing action plans to address problems.

Individuals with more serious mental health issues (requiring longer term intervention) are referred—formally or informally—to the appropriate mental health resources. Formal referrals or recommendations are defined as referrals in which the consultant assists the client in establishing contact with a specific resource. Informal recommendations may be offered, such as supplying a number of possible resource options which clients may access independently.

### 1.4.6 Client Briefing

Prior to a formal consultation, consultants must review the following five points which describe the parameters of the program:

1. Consultants provide brief solution-focused problem solving support (a behavioral action plan).
2. Consultants work in support of and in conjunction with existing military entities/services.

3. Consultants keep no records.

4. Consultants cannot see clients who are 'in the system'.

5. Consultants maintain a Duty to Warn obligation.

Consultants should review and utilize the DoD approved Informed Consent Script:

**Informed Consent All Branches:** 'Before we begin, I'd like to briefly describe this service. In partnership with the (mention appropriate Service), we help service members and their families with a variety of issues. These can include concerns regarding emotional well being, parenting, as well as other issues affecting you and your family. Information you provide to me or other consultants will be kept confidential, except to meet legal obligations or to prevent harm to self or others. Legal obligations include requirements of laws and DoD or military regulations. Harm to self or others includes suicidal thought or intent, a desire to harm oneself, domestic violence, child abuse or neglect, violence against any person, and any present or future illegal activity. Do you have any questions about what I have just explained?'

**Air Force Only:** For the Personnel Reliability Program (PRP) certified members, reporting any concerns related to reliability is also required.

## SECTION 2—MFLC PROGRAMS

### 2.0 Four Delivery Service Models of the MFLC programs

**Outreach/Rotational ('Rotational')**: Services are delivered by consultants both on and military installations within the civilian community, but never in the Medical Treatment Facilities (MTFs). Services consist of face-to-face counseling, outreach/awareness services and educational services provided on a short-term rotational basis to meet need. Rotational counseling also includes short-term specialized programs such as the DoDEA and CYP Summer Enrichment Program that operates during the summer months to support summer school, camps and summer child and youth programs DoD-wide.

**On-Demand**: Services include non-medical counseling support and psycho-educational presentations which cover a variety of topics including deployment and reintegration, communication, and grief and loss. These services are primarily for drill weekends and family events for the National Guard and Reserve Component. On-demand events include support for Service Members and family members and may also include activities for children.

**Counseling Referral**: Counseling Referral services are provided by MHN practitioners in a private office and could include up to twelve sessions (as authorized by MHN—primarily for

National Guard and Reserve Component members and their families).

**Full-time Counseling**: Services are delivered by full-time consultants who are hired by MHN and placed on the military installation. Full time consultants work in a social service delivery program model.

The scope of this manual is primarily intended to cover the service delivery and administrative requirements for consultants contracted to provide Rotational and On-Demand counseling.

## 2.2 Overview of Rotational Counseling Programs outside the Continental United States (OCONUS)—Excluding Hawaii, Alaska and Puerto Rico

### 2.2.1 Europe Community Team

**Areas Served:** The OCONUS Europe Community Team provides services to military members and their families in Germany, the Netherlands, Belgium, Italy, Spain, Norway and Portugal.

**Population Served:** Military personnel including Active Duty, Reserve, Family members, and individuals on the installation or present at events.

**Length of Assignments:** OCONUS assignments fall under three categories:
A-Team 30 days
B-Team 45 days
C-Team 45 days

All assignment teams overlap with incoming consultants to minimize burdens on the ACS Staff related to consultant orientation and provide for a seamless transition and increased continuity.

Service begins with a teleconference call held prior to consultant departure from the states. Upon arrival into Frankfurt, consultants attend a two day Orientation (conducted by the Europe-based MHN Manager and Area Coordinators) before they are sent to assignment locations.

**Work Setting:** The work setting can vary widely. Formal consultations may occur in Family Services Centers (FSC) offices. More informal encounters may occur in community meeting locations and other nontraditional settings. However, consultants are not allowed to meet in client's homes.

*A key element of this program is that consultants are visible in the community and connect with military personnel and family members wherever there is a need.* In this way, the consultants can reach those who might otherwise not seek help.

**Work Schedule:**

- Team members will be scheduled for a 40-hour week and may be required to provide after hours and weekend availability. It is the intent of the European team to schedule team members with 2 days off per week. It is conceivable that some of the team may be asked to provide some form of On-Call support or respond to surge or redeployment activities during unscheduled hours.

- On scheduled days off, consultants are free to travel or use the time as they choose. All of the installations have Army Community Service (ACS) centers and local travel information is available there. The consultant must inform the AC by E-Mail of weekend plans and appropriate contact info (name/address of hotel, etc.).

**Supervision and Oversight:** Consultants work under the supervision of an MHN Area Coordinator (AC) and an Army Community Services Officer (ACSO). The ACs are responsible for the overall clinical and administrative leadership for the MFLC team. Area Coordinators provide weekly, mandatory supervision regarding clinical and administrative issues, making sure that consultants are operating within the parameters of the program and providing quality services to military members and families. Among the responsibilities of the ACs:

- Identify and address team member clinical performance concerns.
- Consult and advise on all administrative issues for team members.
- Counsel/advise team members on appropriate adjustments to behavior in and around the military installations as it may impact the team's effectiveness.

ACs have ongoing contact with consultants through on-site visits, telephone consultations and E-Mail. ACs also provide coaching, education and information updates, which are disseminated to consultants either through MHN or through the

Installation Management Agency in Europe (IMA-E) Office.

ACs further assure that services provided are in keeping with expectations of the ACSO and consistent with the Statement of Work (SOW) as outlined by the OSD.

The ACSO at each location will provide oversight and be available for questions. The ACSO will make all day-to-day assignments in the designated community.

### 2.2.2 Air Force in the Pacific (PACAF)

**Areas Served:** The Pacific Rim including Japan, Korea (see 2.2.3), Guam, Alaska and Hawaii

**Population Served:** Airmen, their dependents and support staff

**Length of Assignment:** 60 days per rotation

**Work Setting:**
The work setting can vary widely. Formal consultations may occur in FSC offices. More informal encounters may occur in community meeting locations. The key to this program is for the consultants to be visible in the community and connect with military personnel and family members wherever there is a need. In this way, the consultants can reach those who might otherwise not seek help.

Note: Consultants are not allowed to meet with clients in the client's home.

**Work Schedule:**
The designated POC will provide day-to-day supervision of the consultant schedule. The consultant is contracted on the basis of 40 hours per week but is not limited to an 8-hour day. Situations and/or meetings, briefings and appointments may extend daily work hours. Every effort will be made to give the consultant two consecutive days off each week. If the consultant is required to work beyond a 40-hour workweek this must be discussed and approved in advance by the MHN supervisor. Consultants are available to MHN 24 hours a day, seven days a week for potential surge or redeployment activities; consultants who will travel more than 2 hours driving time from the installation must notify the MHN supervisor prior to departure.

**Supervision and Oversight:**
The consultant's daily work activities are coordinated by the designated POC. MHN's supervisor provides program and clinical oversight via telephone, E-Mail and conference calls. The MHN supervisor provides mandatory, weekly supervision via telephone to address clinical and administrative issues, making sure the consultants are operating within the parameters of the program and providing quality services to military members and families. When a consultant receives a request to provide a service that is outside those normally provided by the consultant, the consultant is to contact the MHN supervisor for approval. All

educational groups or trainings must be previewed and approved by the POC and MHN's management team.

**Service to Children and Department of Defense Dependent Schools (DoDDS):** Policy guidance provided by PACAF Headquarters states:

- Consultants may NOT provide consultation services at/inside DoDD schools. Consultants may deliver briefings about services to DoDDs faculty, but only at the request of the faculty.
- Consultants may, however, provide consultation services to school age children at an appropriate helping agency location (meaning at the Family Center, Youth Center, etc). Parental consent is required for consultation school age children. Parental consent is also required for observation of children/adolescents.
- Consultants will pass all parental consent forms to POCs for appropriate filing.

### 2.2.3 Korea Team

**Areas Served**: Army installations in Korea.

**Population Served**: Military personnel including Active Duty, Reserve, Family members, and individuals on the installation or present at events.

**Length of Assignment**: 60 days per rotation. All assignment teams overlap with incoming consultants to minimize burdens on the ACS Staff

related to consultant orientation and provide for a seamless transition and increased continuity.

**Work Setting**:
The work setting can vary widely. Formal consultations may occur in ACS offices. More informal encounters may occur in community meeting locations. The key to this program is for the consultants to be visible in the community and connect with military personnel and family members wherever there is a need. In this way, the consultants can reach those who might otherwise not seek help.

**NOTE**: Consultants are not allowed to meet with clients in the client's home.

**Work Schedule**:
The designated POC will provide day-to-day supervision of the consultant schedule. The consultant is contracted on the basis of 40 hours per week but is not limited to an 8-hour day. Situations and/or meetings, briefings and appointments may extend daily work hours. Every effort will be made to give the consultant two consecutive days off each week. If the consultant is required to work beyond a 40-hour workweek this must be discussed and approved in advance by the MHN supervisor. Consultants are available to MHN 24 hours a day, seven days a week for potential surge or redeployment activities; consultants who will be more than 2 hours driving time from the installation must notify the MHN supervisor prior to departure.

**Supervision and Oversight:**
All consultants will be working under supervision of a MHN supervisor and the local ACS Officer or other military POC. The ACS Officer or other military POC will provide oversight to address day-to-day duties and scheduling issues. The MHN supervisor provides mandatory, weekly supervision via telephone regarding clinical and administrative issues, making sure the consultants are operating within the parameters of the program and providing quality services to military members and families. All consultants are required to attend weekly supervision calls regardless of length of time spent in a particular location. Other responsibilities include:

- Identify and address consultant performance concerns
- Consult and advise on all administrative issues for MFLC team
- Counsel/advise team members on appropriate behavioral adjustments in and around the military installations

## 2.3 Overview of Continental United States Rotational Counseling Programs (CONUS) and Alaska, Hawaii and Puerto Rico

**Areas Served:** The CONUS MFLC Program provides services to military members and their families in the contiguous U.S., Alaska, Hawaii and Puerto Rico.

**Population Served:**

- Military personnel including Active Duty and Activated Guard and Reserve

- Family members

**Length of Assignments:** The consultant is assigned to a specific military installation to provide services on an ongoing basis. Assignments are rotational up to 90 days depending on the needs of the installation and nature of the assignment.

**Work Setting:**
The work setting can vary widely. Formal consultations may occur in Family Service Center (FSC) offices and Airmen and Family Readiness Centers (A&FRC). At some Joint Bases, the terms may be different, such as War Fighter Readiness Family Center or War Fighter Family Support Center. It is important that you confirm the name of the location you may be supporting. More informal encounters may occur in community meeting locations and other non-traditional settings. The key to this program is for the consultants to be visible in the community and connect with military personnel and family members wherever there is a need. In this way the consultants can reach those who might otherwise not seek help.
**NOTE:** Consultants are not allowed to meet with clients in the client's home.

**Work Schedule:** The schedule will be determined by the needs of the FSC /A&FRC Director/Flight Chief and the availability of the consultants. The MHN supervisor will coordinate with the consultants and the FSC/A&FRC regarding the schedule. Some evenings and weekends may be required depending on the needs of the installation.

Consultants on assignments distant from home are free to travel or use their time as they choose on their scheduled days off provided that they are not on-call for surge and deployment activities. If on-call they must be reachable by cell and must remain within reasonable distance from the assignment. Consultants should inform the MHN supervisor and the local FSC/A&FRC Director Officer or other military POC by E-Mail of their weekend plans and any contact info (name/address of hotel, etc.).

**Supervision and Oversight:**
All consultants will be working under supervision of a MHN supervisor and the local FSC/A&FRC Director officer or other military ROC, The FSC Officer/A&FRC Director or other military POC will provide oversight to address day-to-day duties and scheduling issues. The MHN supervisor provides mandatory, weekly supervision via telephone regarding clinical and administrative issues, making sure the consultants are operating within the parameters of the program and providing quality services to military members and families. All consultants are required to attend the weekly supervision calls regardless of how long they have been assigned to the location. Other responsibilities include:

- Identify and address consultant performance concerns
- Consult and advise on all administrative issues for MFLC team
- Counsel/advise team members on appropriate behavioral adjustments in and around the military installations

## 2.4 Department of Defense Education Activities (DoDEA) Program and Child & Youth Programs (CYP) Summer Enrichment Program

**Areas Served:** Programs are conducted with all of the service branches.

- CONUS - Only in CYP, including Puerto Rico
- OCONUS - Europe (Germany, Italy, Belgium, Spain, Portugal), Japan, Guam

**Population Served:** Faculty, staff, parents and children in the DoDEA school system and CYP programs. Programs are conducted with all of the service branches.

**Length of Assignment:** Generally 60 days

**Description of Services:**

- Address short-term problem resolution for issues such as school adjustment, deployment and reunion adjustments, and parent-child communications, Issues can also be described as 'normal reactions to abnormal/adverse situations' which typically are exacerbated by the stress imposed on individuals, families and children by the military life style.
- Support faculty, staff, parents and children in the DoDEA school system and CYP programs. Also provide support for Deployment Reintegration and Reunion Activities.

**Primary Issues:**
The primary focus is on issues children face regarding the deployment of one or both parents. Consultants

also have the opportunity to provide support to parents and staff. Issues are varied and can include:

- Deployment and reintegration issues
- Coping with change
- Stress management
- Parenting skills
- Behavioral management techniques
- Parent-child communications
- Anger management
- Resolving conflicts
- Bullying
- Self-esteem

**Work Setting:**
For consultants participating at a DoDEA school, all interactions with children, families and school staff will occur at the school, including working in the classroom and in a private office. For those consultants participating in CYP, interactions will occur at the CYP facility during the program hours and at some non-traditional work settings, such as summer camps and field trips.

**Work Schedule:**
The work schedule is typically Monday through Friday though consultants may be asked to work in the evenings or weekends depending on need.

- DoDEA Mornings
- CYP Depending on the location, CYP programs can be all day or afternoons only.

**Supervision and Oversight:**
All team members work under the supervision of a MHN supervisor, AC (in Europe only) and their designated POC. The MHN supervisor provides

mandatory, weekly supervision via telephone to address clinical and administrative issues, making sure the consultants are operating within the parameters of the program and providing quality services to military members and families. If the site only supports CYP, the POC will be at CYP; if the consultant is assigned to DoDEA in the morning, a POC will be available at the school. The POCs at each location will provide oversight and be available for questions. POCs will make all day-to-day assignments in the designated community.

### 2.5 'Operation Purple' Camps

Summer camps may or may not be identified as 'Operation Purple' Camps depending on whether the camp receives funding through a National Military Family Association (NMFA) grant from the. Summer camps that receive NMFA funding are part of the 'Operation Purple' Camp system and are free to military families of all service branches. 'Operation Purple' (and other) Camps are held in both CONUS and OCONUS locations. To be eligible to participate, consultants must have experience working with children.

**Areas Served:**

- CONUS - Contiguous U.S,
- OCONUS Europe, Pacific Rim, Alaska, Hawaii and Puerto Rico

**Population Served:** 'Operation Purple' Camps support the emotional needs of children of military families whose parent(s) is, has been, or will be deployed

and who are attached to active duty, guard, or reserve units.

**Length of assignments:** Usually one to two weeks

**Primary Issues:**
The primary focus of this work is with children facing emotional issues related to the deployment of either or both parents and with the family related issues that result. Typical issues include but are not necessarily limited to:

- Deployment and integration issues
- Missing parents
- Fear for parent's safety
- Confusion over changing roles in family
- Lack of support/understanding in their communities and schools
- Coping with change
- Stress management
- Improving communication skills
- Anger management
- Conflict resolution
- Self esteem issues

**Work Setting:**
For consultants assigned to summer camp, all interactions with campers will occur within the confines of the camp, Interactions may be informal (such as interacting with children during participation in camp activities) or on a more structured basis (such as facilitating groups or meeting with children apart from the group as requested by camp staff). Consultants may also provide information/skills to camp counselors on

recognizing when someone is having an emotional problem.

**Work Schedule:**
Since children remain at camp 24 hours a day, the work schedules are very flexible and can vary from day to day. The schedule is determined by the needs of the location and coordinated between the consultant and the POC.

**Supervision and Oversight:**
Consultants work under the supervision of an MHN clinical liaison/supervisor/AC and an on-site military POC. The MHN supervisor provides mandatory, weekly supervision via telephone to address clinical and administrative issues making sure the consultants are operating within the parameters of the program and providing quality services to military members and families. The military POC will provide oversight regarding day-to-day duties and scheduling issues. Line of Sight rules apply at all times (refer to Section 6.11).

**2.6 On-Demand Counseling Services**

**Area Served:** CONUS, Puerto Rico, Alaska and Hawaii

**Population Served:** National Guard and Reserve Members and their families

**Length of Assignment:** One to two days and primarily on weekends

**Primary Issues:** Issues related to pre-deployment and reintegration or rapid response services for traumatic events.

**Work Setting:** Drill centers or an off-site event at a hotel or conference center.

**Work Schedule**: Services are generally for 4-8 hours during the day.

**Supervision and Oversight**: Consultants work under the supervision of the MHN clinical liaison and an on-site military POC.

## SECTION 3—PREPARATION AND TRAINING

MHNGS offers comprehensive training resources to assure that consultants filling assignments are fully prepared. This 'assignment readiness' supports your success as a consultant as well as the success of the MFLC program.

Required Online Training (Section 3.1) describes the MFLC role and the parameters of MFLC Service delivery. Program specific training offers additional information and tools for assignments in Child and Youth, USAREC, and JFSAP programs. Branch-specific training educates consultants in the rank, insignia, and important elements of each branch's culture.

*Note that the training modules listed in Section 3.1.1 are required of all consultants who participate in the MFLC Network.* Modules listed under 3.1.2 and 3.1.3 are also required prior to assignment with a given program and/or branch. Consultants are contractually obliged to complete pre-assignment training. *Consultants who fail to complete required training will not be selected for assignment and may be terminated from program participation.*

The Pre Assignment Information Packet and Onsite Training are addressed in sections 3.2 and 3.3.

### 3.1 Required Online Training

Assignment readiness assures your success as a consultant as well as the success of the MFLC program.

MHNGS offers comprehensive resources to assure that all consultants filling assignments are fully prepared.

Your required training will assist you in understanding your role and the parameters of MFLC Service delivery, including details about our models of service delivery. Program specific training will give you information and tools for assignments in Child and Youth, USAREC, and JFSAP programs. Branch-specific training prepares consultants to work with each branch of service prior to assignment.

### 3.1.1 Training Required for ALL Consultants

Listed below you will find the minimum training required for participation in the program.

***Consultants who have not completed these modules are not eligible to be considered for assignments.***

Training required for all Consultants includes critical program information, including role definition, parameters of the program, general information about military environments, MHNGS policies and procedures, guidelines about specific situations, and overall ins and outs of service delivery. This section also includes Presentation Skills training, which will prepares Consultants to deliver presentations--an essential part of the MFLC role.

| TRAINING REQUIRED FOR ALL CONSULTANTS | | |
|---|---|---|
| **Training Title** | **Frequency/ Timing** | **Description** |
| General Orientation Training and Exam | Prior to first assignment and again annually | This training familiarizes Consultants with the MFLC program, including the history of the program, an overview of the military environment, MFLC roles and responsibilities, policies and procedures, program parameters and program administration. *Note that this module includes an exam; To pass the exam you must score at least 80%.* |

| TRAINING REQUIRED FOR ALL CONSULTANTS | | |
|---|---|---|
| **Training Title** | **Frequency/ Timing** | **Description** |
| MFLC Duty to Warn Training and Exam | Prior to first assignment and again annually | This training describes Duty to Warn protocols. Duty to Warn training applies to all programs, including CYS and adult. A duty to warn Resource Guide is also available through the LMS. *Note that this module includes an exam. To pass the exam you must score at least 80%.* |

| TRAINING REQUIRED FOR ALL CONSULTANTS | | |
|---|---|---|
| **Training Title** | **Frequency/ Timing** | **Description** |
| MFLC Activity form updates - June 2009 | Prior to first assignment and again annually | Activity Form submission is a MFLC Program requirement. This training provides detailed information about the Activity Form and the importance of accurate and timely reporting. Scenarios for additional education are also supplied. |

| TRAINING REQUIRED FOR ALL CONSULTANTS | | |
|---|---|---|
| **Training Title** | **Frequency/ Timing** | **Description** |
| MLC - MCS Course v4 (Military Culture Sensitization) and Exam v4.a | One time prior to first assignment | This is a general overview of military culture and customs, chain of command, rank and insignia, service branch structure and issues affecting military and family members. *Note that this module includes an exam. To pass the exam you must score at least 80%.* |

| TRAINING REQUIRED FOR ALL CONSULTANTS | | |
|---|---|---|
| **Training Title** | **Frequency/ Timing** | **Description** |
| MFLC - Provider Manual and Exam | One time prior to first assignment | This manual is designed to provide MFLCs with complete background information on the MFLC program, including administrative processses, policies and procedures. *Note that this module includes an exam. To pass the exam you must score at least 80%.* |

| TRAINING REQUIRED FOR ALL CONSULTANTS | | |
|---|---|---|
| **Training Title** | **Frequency/ Timing** | **Description** |
| MFLC - Presentation Skills | On Demand - prior to first assignment and every 6 months thereafter. All other Consultants - required prior to first assignment and again annually. | Presentations Skills training focuses on three key elements that differentiate standard presentations from powerful ones: presentation, the presenter, and the audience. |

### 3.1.2 Program-Specific Required Training:

These modules are required for consultants filling program specific assignments.
The list includes CYS, Summer Camp/Summer Enrichment, Schools, and JFSAP. If you regularly fill assignments in any of these programs, you should take or refresh your training immediately.
Otherwise, you need not complete these modules unless/until you are scheduled for a CYS or Schools assignment.

Only consultants filling Summer Camp and Summer Enrichment assignments should take these orientations.

| PROGRAM SPECIFIC REQUIRED TRAINING | | |
|---|---|---|
| **Training Title** | **Frequency/ Timing** | **Description** |
| MFLC – CYS Program Self-Paced Module and Exam | Prior to first CYS assignment and again annually | This module provides an overview of the CYS program. The training reviews work settings, typical MFLC activities, and ways to support children, staff and parents. *Note that this module includes an exam. To .ass the exam you must score at least 80%.* |

| PROGRAM SPECIFIC REQUIRED TRAINING | | |
|---|---|---|
| **Training Title** | **Frequency/ Timing** | **Description** |
| MFLC -CYS School Program Manual and Exam | Prior to first CYS assignment and again annually | This module reviews the roles and responsibilities of consultants on school assignments, including review of interactions with military children, their parents, and school personnel. *Note that this module includes an exam. To pass the exam you must score at least 80%.* |

| PROGRAM SPECIFIC REQUIRED TRAINING | | |
|---|---|---|
| **Training Title** | **Frequency/ Timing** | **Description** |
| MFLC CYS Summer Camps Orientation and exam | One time per summer prior to assignment | This training is designed to familiarize consultants with CYS Summer Camps. *Note that this module includes an exam. To pass the exam you must score at least 80%.* |

| PROGRAM SPECIFIC REQUIRED TRAINING | | |
|---|---|---|
| **Training Title** | **Frequency/ Timing** | **Description** |
| MFLC - CYS Summer Enrichment Orientation and exam | One time per summer prior to assignment | This training is designed to familiarize consultants with the DoDEA Summer Enrichment program *Note that this module includes an exam. To pass the exam you must score at least 80%.* |

### 3.1.3 Branch Specific Required Training

You should complete this training prior to filling any assignment with a given branch of service.

If you regularly fill assignments with a given branch of service, you should complete or refresh the associated training immediately. Otherwise, you need not complete branch-specific modules until you are scheduled for an assignment with that branch.

| BRANCH SPECIFIC REQUIRED TRAINING | | |
|---|---|---|
| **Training Title** | **Frequency/ Timing** | **Description** |
| MFLC Air Force Culture Manual and Exam | One time prior to first Air Force assignment | This manual provides an overview of Air Force culture, covering Air Force customs, ranks, acronyms and terminology and services that support the Air Force. *Note that this module includes an exam. To pass the exam you must score at least 80%.* |

| BRANCH SPECIFIC REQUIRED TRAINING | | |
|---|---|---|
| **Training Title** | **Frequency/ Timing** | **Description** |
| MFLC Air Force Orientation | One time prior to first Air Force assignment | This module is required in addition to the Air Force Culture Manual and Exam. Air Force Orientation gives consultants concrete information about what to expect during Air Force assignments, as well as further detail about AF Installations and rank structure. Vignettes from MFLCs filling AF assignments are included to further orient consultants to working with the AF population. |

| BRANCH SPECIFIC REQUIRED TRAINING | | |
|---|---|---|
| **Training Title** | **Frequency/ Timing** | **Description** |
| MFLC Army Culture Manual and Exam | One time prior to first Army assignment | This manual provides an overview of Army culture, covering Army customs, ranks, acronyms and terminology and services that support the Army. *Note that this module includes an exam. To pass the exam you must score at least 80%.* |

| BRANCH SPECIFIC REQUIRED TRAINING | | |
|---|---|---|
| **Training Title** | **Frequency/ Timing** | **Description** |
| MFLC - Navy Culture Manual and Exam | One time prior to first Navy assignment | This manual gives an overview of Navy culture, including navy traditions and values. This module also reviews specific terminology and organizational structure. *Note that this module includes an exam. To pass the exam you must score at least 80%.* |

| BRANCH SPECIFIC REQUIRED TRAINING | | |
|---|---|---|
| **Training Title** | **Frequency/ Timing** | **Description** |
| MFLC Marine Corps Culture Manual and Exam | One time prior to first Marines assignment | This manual gives an overview of Marine culture including the core values of Marines, their mission, rank structure and identifying insignias. *Note that this module includes an exam. To pass the exam you must score at least 80%.* |

### 3.1.4 Additional 'live' training

After selection for assignment, Professional Relations or Field Operations staff will contact the consultant with information about any further training necessary for assignment preparation. Further training may be delivered through teleconference or webinar.

## 3.2 Pre Assignment Information Packet

Prior to an assignment, Field Operations will send the consultant an information packet applicable to that assignment. The packet will include materials

such as the assignment-specific Tip Sheet and other installation information needed for the assignment.

### 3.3 On-Site Training

#### 3.3.1 OCONUS

- **Europe Community Teams:** All consultants will attend a mandatory on-site orientation ('Inbrief') in Frankfurt, Germany. The military POC and MHN personnel conduct the orientation. Consultants who are new to the program will be assigned to work with an experienced consultant during their assignment.

- **PACAF Teams:** Previous consultants will fully orient new consultants to the specific site during two-day overlap in assignments.

#### 3.3.2 CONUS including Alaska, Hawaii and Puerto Rico

Consultants who are new to the program will be assigned to work with an experienced consultant and/or MHN supervisor during the initial phase of the assignment.

#### 3.3.3 On Demand

The MHN supervisor will provide a phone in-service to all consultants prior to each On-Demand event. Consultants who are new to the program will be assigned to work with an experienced consultant or MHN supervisor on their first On-Demand assignment.

Note that all On Demand consultants must complete the online MFLC Presentation Skills training module prior to the first On Demand Assignment, and every six months thereafter.

## SECTION 4—QUALITY ASSURANCE

### 4.1. Quality Assurance Surveillance Plan

The MFLC Program Quality Assurance Surveillance Plan (QASP) will assist the government in assuring that the prime contractor for this effort performs as required under the awarded task order and the members of the Armed Forces receive the requisite quality of support they need and deserve. The QASP details how and when the government will survey, observe, test, sample, evaluate, and document contractor performance according to the Statement of Work (SOW).

Maintaining high standards of service is crucial to the MFLC Program. MHN has developed a QASP that provides a system for:

- Establishing and maintaining standards of quality and safety
- Measuring outcome and user/participant satisfaction
- Monitoring and improving the performance of consultants
- Providing a process for grievances and complaints

### 4.2 User/Participant Satisfaction

Data from the following instruments will be reported to the QASP Committee who will monitor overall

program satisfaction as well as satisfaction with individual consultants.

### 4.2.1 POC Evaluation

POCs will be asked to evaluate the consultants providing services and give feedback regarding overall satisfaction with the MFLC Program. MHN will provide the POCs with evaluation forms and satisfaction feedback forms that can be submitted electronically or via fax or mail. The POCs will also be provided with the opportunity to give their evaluation and feedback directly to the Program Director/Manager via telephone.

### 4.2.2 Supervisor/Area Coordinators Evaluation

MHN supervisors and ACs will evaluate and track each consultant's performance.

### 4.2.3 Consultant Evaluation

Each consultant will be asked to evaluate and provide feedback on his or her experiences with the MFLC Program anonymously through electronic survey.

### 4.3 Credentialing

In accordance with the QASP, all consultants must be credentialed and remain in good standing with the MHN Credentialing Program. Failure to comply with credentialing requirements may result in immediate termination from the DoD network. Therefore, any changes in consultant contact information/ mailing address must be communicated immediately to MHN Professional Relations.

MHN will contact all Consultants regarding information needed and timelines for recredentialing.

Consultants must respond to all requests for recredentialing information.
Once all required recredentialing materials have been received, Consultants will be contacted *only* if a problem arises.
MHN's credentialing requirements are available for review on our web site, at **www.mhn.com**. (Section 4 of the MHN Commercial Provider Manual). For questions regarding credentialing, or to communicate changes in demographic information, consultants should contact Professional Relations at (800) 541-3353.

## SECTION 5—CONSULTANT ADMINISTRATIVE RESPONSIBLITIES

### 5.1 Notice of Information Change

Consultants are required to notify MHN if their mailing, practice or vendor information changes. Such changes should be directed to Professional Relations by phoning (800) 541-3353. Changes to payment or vendor information for Rotational and On-Demand assignments as it pertains to invoices and expense reports should be reported to Professional Relations via e-mail, at **mflc.program@healthnet.com**.

### 5.2 Contractual Obligations

#### 5.2.1 Contractual Agreements

- Contractual requirements for all aspects of Rotational and On-Demand assignments are outlined in the **Provider Task Order Agreement** and this manual. Consultants are contractually bound by both the Agreement and this manual.

- Requirements specific to each Rotational On-Demand assignment are included in the **Consultant Task Order** (CTO) issued by MHN.
- All consultant reporting requirements are covered in this manual.

### 5.2.2 Required Documents and Forms

- **Executed Signature Page of Provider Services Task Order Agreement: (PSTOA):** Consultants who have not signed and returned the signature page of the **PSTOA** to Professional Relations may not deploy for assignment. Execution of the Agreement covers all future assignments unless terminated in accordance with the terms of the Agreement.
- **Consultant Task Order (CTO):** For Rotational and On-Demand assignments Professional Relations will issue a CTO to the consultant establishing the terms and conditions of the specific assignment. Consultants must notify MHN via e-mail within 2 business days if declining the CTO. If this written notice is not sent within appropriate time frames, the consultant has accepted the CTO and has agreed to deliver the services specified in the CTO.
- **Supplier Business Questionnaire (SBQ):** This document provides relevant business and tax related information required for vendor set up on the MHN system. This document is required but need only be submitted once unless there is a change in the business relationship.
- **Business Associate Agreement:** HIPAA required document, submitted only once.

- **Electronic Funds Transfer (EFT) Forms:** Forms needed to set up direct deposit. Direct deposit is encouraged but not mandatory. Once direct deposit is initiated the Consultant should allow up to two pay cycles before it goes into effect.
- **W-9:** Required tax document. Information on this form must align with tax information provided on the CTO and SBQ.
- **Copy of Passport:** Copy of passport is required in preparation of travel arrangement to international assignments. Additionally, this passport information is used in preparation for installation access.
- **Completed Emergency Contact Sheet:** Provides MHN with information needed in the event of emergency as well as relevant information needed in preparation for installation access.

### 5.3 Assignment Availability

Consultants should use the following link to submit availability information to the program:
**MFLC Availability Survey**

## SECTION 6—GENERAL POLICIES AND PROCEDURES

Adherence to the policies listed below is required as a condition for continued participation in the MFLC network. A consultant may direct questions about any of the following policies and procedures to the assigned MHN supervisor while on assignment. (Consultants who are not on assignment may direct questions to MHN Professional Relations; mflc.program@healthnet.com)

**6.1 Activity Form**

It is also critical that MFLCs filling assignments appropriately document services provided through the program. This is done through submission of the Activity Form.

The Activity Form collects data for utilization reports that MHNGS provides to DoD. Activity Form data also assists us in determining current and future staffing needs, so it is imperative that the information be accurate. Military & Family Life Consultants may provide direct, indirect or informal support to Service Members and their families. It is important to understand the differences between direct, casual, and indirect activities.

**Direct Support**: Applies when the MFLC assists an individual, couple or family in dealing with an issue by coaching, problem solving or providing education or emotional support. As part of completing the Activity Form, the consultant is asked to provide the presenting issue and action plan.

**Indirect Support**: Applies when the MFLC conducts informal and formal briefings about the program with individuals, groups or staff, attends a community event or other gathering ('Event Outreach'), conducts a presentation/training or facilitates a group discussion. Indirect Support services may also be delivered in situations where a consultant attends a meeting or event and supports the installation's support structures (Command Support). Services are considered Informal Support if the consultant takes it upon him/herself to make contact with Service Members and families, delivering informal (not scheduled) outreach in a variety of settings. When there are multiple Military & Family Life Consultants present at an Event or

Outreach, each MFLC should complete and submit an Activity Form for the Event activity but divide the total number of participants amongst them and count their own contacts individually. **Casual Support** is a direct type of activity where contact is made through a 'walk up' or phone conversation with a Military Family Life Consultant (MFLC) and a brief exchange is conducted; MFLC interaction with the individual is limited. This type of contact does not fit the more formal and extensive ***direct support*** contact consultation. Confer with your supervisor if you have specific questions regarding casual support.

***Submission of complete and accurate Activity Forms for all reportable activity is a requirement for continued participation in the program. Activity Forms must be completed online daily, or within 48 hours of service delivery***. The Activity Form is located on the home page of **www.mhngs.com** and instructions for completing each field are embedded in online form. Please review the instructions on line frequently as changes may occur.

To access **www.mhngs.com**, consultants must first register on the Provider Portal at **www.mhn.com**; the user name and password will be the same for both Web Sites. For questions about registering or using either Web Site, please contact **professional.relations@mhn.com** or call 800-541-3353.

## 6.2 Assignments

### 6.2.1 Location

MHN staff and military POCs determine the location of all consultant assignments. Assignments are subject to change at any time.

### 6.2.2 Assignment Extensions for Business Purposes

Consultants who are interested in extending assignment travel dates beyond the contract end date should contact the MHN supervisor. Extensions are made at the discretion of MHN staff and military POCs. Depending on the needs of the assignment location, a consultant may be asked by MHN to extend an assignment, however, this is strictly voluntary; consultants are not required to extend. **Note:** In general, Consultants may not remain at any location longer than 90 days without a break. (Embedded assignments may be an exception to this rule.) Consultants may seek a separate assignment during the break.

## 6.3 Code of Conduct on and off the Installation

MHN has specific policies regarding behavior and professionalism of consultants while on an installation and while on assignment or under contract to provide services. Policies are listed below. In general, while on assignment consultants are considered to be representatives of the U.S. Government in addition to being representatives of MHN. Therefore, consultant personal conduct is expected to be extremely professional at all times. *Consultants are expected to abide by Code of Conduct/Corporate policies and to maintain professional decorum while on assignment and during assignment periods. Failure to do so (as determined by MHN at its sole discretion) may result in termination from the assignment and possibly the program.*

## 6.4 Confidentiality Standards

**6.4.1** Consultants should maintain industry standards regarding confidentiality at all times. Since this program is 'off the record,' no administrative or clinical records of contact with military members or their families should be kept. Any notes kept must be shredded and discarded immediately. Electronic files should not be saved on Government computers under any circumstances. In addition, consultants should avoid socializing with military staff at the installation.

### 6.5 Conflicts of Interest

- Consultants are prohibited from accepting or giving any gratuities to/from military or civilian personnel or family members. This includes money, gifts, meals, etc.
- Consultants are prohibited from referring Service Members or their families to their private practice or their group practice under any circumstance.
- Consultants are prohibited from giving any gratuities or gifts to MHN employees.

### 6.6 Dress Code

The dress code is in effect during all assigned working hours.

Consultant attire should be neat, clean and pressed, and should fall under one of the following general categories:

- Business attire
- Business casual attire including casual slacks, polo shirts, sweaters and blouses

**Attire not allowed:**

- Jeans and tennis shoes
- Athletic wear (jogging suits or exercise clothing)

- Beachwear (tank, strapless or halter tops and shorts)
- Clothing with offensive language and/or symbols
- Revealing or frayed/torn clothing
- Rubber beach shoes, 'flip flops'
- Any clothing with language or slogans promoting any political or professional organizations (if in doubt, leave it out!)
- *Any* jewelry in facial piercing. (Facial piercing violates military dress code)

**6.7 Duty To Warn**

Consultants should refer to the online Duty to Warn Resource Guide for up-to-date protocols. The Duty to Warn Resource Guide may be accessed under *Resources* at **www.mhngs.com.**

In general, exceptions to confidentiality are dictated by military guidelines and include the following:

- Harm to Self
- Harm to Others
- Domestic Violence
- Child Abuse
- Present or future illegal activity
- Violence against another person

It is up to the consultant to confirm duty to warn procedures at each location and to obtain contact information for the Sexual Assault Response Coordinator (SARC), FAP MPs and/or other appropriate urgent/emergent community resources. Urgent/emergent situations should be reported to MPs, Security Forces or civilian police as appropriate. All duty to report situations must be reported to the MHN supervisor or AC immediately.

All CONUS Consultants are responsible for making an independent report to the local Child Protective Agency and FAP (Family Advocacy Program) for Child Abuse Duty to Warn situations. Consultants should obtain the name of agency personnel and case file number if available and provide this information to the MHNGS supervisor. For Domestic Violence situations, the consultant must make an independent report to FAP. Consultants are to provide any demographic information related to DTW situations to supervisors by phone. For assignments outside the United States, please consult with your supervisor regarding appropriate resources for child abuse and domestic violence situations as resources may differ. Consultants do not keep written records. Consultants will receive instructions from the MHN supervisor regarding reporting requirements to MHN. (See 'Record Keeping' section below.)

**6.8 E-mail**

Consultants may not include names of Service Members or their family members when sending information by e-mail. Consultants should use discretion when sending e-mail messages to family, friends, colleagues, etc, about their assignment. Such e-mails could be forwarded to a variety of media sources and could be distributed without the consultant's knowledge.

**6.9 Holidays and Sick Days**

Unless specified in the CTO, consultants are not paid for holidays and sick days.

**6.10 Rental Cars**

If an assignment requires air travel, a rental car will be authorized. In cases where driving distance to the assignment is more than 50 miles, a rental car *may*

be authorized (if associated costs are determined by MHN to be less than mileage reimbursement or the cost of air transportation.) If Consultant is authorized for a rental car, this will be indicated in the CTO. If a rental car is not authorized in the CTO, but the assignment is in support of a US Army Recruiting Command assignment ('USAREC'), MHN may still authorize a car rental as required during the fulfillment of this assignment.
For On Demand events *only*, if the consultant resides more than 50 miles (each way) from the service location, MHN will waive the rental car requirement (if less costly than mileage reimbursement) and will authorize mileage if the consultant is contacted for the event less than 2 days prior to the start date and is unable to both pick-up the rental car and reach the event on time.

The travel department is responsible for booking the best option for a rental car and generally includes a small to mid-sized vehicle. Standard transmission cars are reserved for all OCONUS assignments. *(Note that consultants must be proficient driving a standard transmission to be eligible for OCONUS assignments.)*
Consultant agrees that any related expenses incurred during personal time will not be reimbursed by MHN.
Provider agrees that the collision damage waiver and personal accident insurance will not be taken. Should the Consultant elect to purchase insurance, the full cost shall be the responsibility of the Consultant. Additionally, Provider shall not be authorized to designate an additional driver on the company rental car.

Consultants should not transport clients, their family members or military personnel in vehicles leased by MHN. Only MHN personnel or MHN contracted personnel can be transported in vehicles rented by MHN.

**6.11 Line of Sight**

Consultants are not to meet alone with a child or a group of children without being in the line of sight with no barriers of the child/children's parent/s or the military POC or the POC's designated staff. If the child and the consultant are within view of the child's parents or military supervisor through an open window or door this is considered acceptable to the 'no barrier' rules. Consultants are never to be in a supervisory position with a child or a group of children.

**6.12 Media**

- **Consultants are prohibited from talking to/giving interviews to the media about assignments or about the MFLC program.** This restriction includes interviews or comments to local newspapers, school or church newsletters or bulletins, radio or T.V. stations.
- This restriction applies to the media both in and outside of the U.S. and is expressly included in the Provider Services Task Order Agreement.
- Consultants are prohibited from any publication by any means related to:
    - Any MFLC program information
        - Specific information related to assignments, locations, clients seen, or MFLC activities

- Personal opinions about persons or functions related to an MFLC assignment; opinions of colleagues or any other person about MFLC services or program.

- Consultants are prohibited from discussing or disseminating *any* information about the MFLC Program through seminars or workshops and/or web sites, articles, books, blogs, social networking sites, bulletin boards, surveys or any other medium.
- Violation of any part of this policy is grounds for termination from the MFLC network.

**6.13 On-Call Duties**

Consultants are prohibited from assuming on-call procedures normally provided by Medical, Life Skills or Family Advocacy, as MFLCs are not credentialed for this type of duty. The MHN supervisor and/or military POC will advise the consultant if he/she must be available to respond to surge or redeployment activities.

**6.14 Policy on Related Consultants**

Consultants who are related (spouse, sibling, etc.) will not be assigned to the same location.

**6.15 Politics**

- Consultants are expected to refrain from engaging in any political discussions with military members and their families or civilian staff either on or off the installation.
- It is against regulations for military personnel to talk against any elected official. Military personnel are unwilling to engage in any political conversations and will be uncomfortable if a consultant attempts to do so.

- Strict adherence to this restriction is required for participation in this program.

**6.16 Promotional Materials**

All promotional materials, such as brochures and business cards, will be provided by the installation. Consultants who are asked by the military POC to create any type of promotional materials should contact the MHN supervisor.

**6.17 Record Keeping**

Since contacts with military personnel and family members are off the record, there are no clinical or administrative records kept on individuals or groups with whom the consultant has contact. Consultants are not to keep any written record of consultations (with the exception of the Activity Form, which is anonymous).

*Any informal notes kept must be shredded within 24 hours. Consultants must not save electronic files on military computers under any circumstances.*

**6.18 Restricted Reporting**

Restricted reporting means that any (active duty) victim of sexual assault or active duty family member or intimate partner victim of domestic abuse can contact identified individuals for assistance without triggering a military investigation or command notification. The purpose of Restricted Reporting directives and of this policy is to assure victims can access services (i.e., medical, counseling, advocacy...) to help them address any physical or emotional needs associated with the assault without command involvement or an investigation that might cause additional distress.

Sexual assault and domestic violence (domestic abuse) are not reportable events if the victim chooses to make a restricted report to specific individuals: Sexual Assault Response Coordinator (SARC), Victim Advocate or the Family Advocacy Program Office.

**PROCEDURES:**

1. Inform the individual—prior to disclosure that she/he is a victim of sexual assault or domestic violence—that the military will provide assistance without notifying command or investigating the allegation. This is called restricted reporting. However, if the individual discloses details that he/she has been a victim of sexual assault or domestic violence, this constitutes a Duty To Warn situation where the consultant must notify his/her supervisor immediately.

2. For restricted reporting, the victim must speak with specific individuals and consultants can provide a warm transfer to those identified individuals. Sexual assault incidents are transferred to the Sexual Assault Response Coordinator (SARC) wherever the individual is located. Domestic violence incidents are transferred to the Domestic Abuse Victim Advocate (VA) or the Family Advocacy Program Office wherever the caller is located. The SARC, VA, or FAP Office **must** be told that the victim has requested to make a restricted report.

3. If the caller chooses to make an **unrestricted** report, notification can still be made to the

SARC or FAP office, or security police (an unrestricted report means that an investigation will occur and command will be notified).

4. The SARCs, VAs and FAP offices will thoroughly explain the restricted and unrestricted reporting process to the victim.

5. Military and Family Life Consultants should make the warm handoff to the SARC, VA or FAP office only.

Restricted reporting for sexual assault is available to active duty victims only. Third party callers, members of the reserve component not performing federal duty, retired members of any component, DoD civilians and dependents making allegations of sexual assault are not eligible for restricted reporting and should be referred to the FAPs or SARCs in their area to make an unrestricted report. Civilian victims of domestic violence who are eligible for treatment in a military medical treatment program may make restricted reports of domestic violence.

**6.1.9 Security**

Security is very high at military installations. Consultants are required to have picture ID and vehicle registration available when entering an installation. Vehicles are subject to search. Due to Force Protection and the status of security on base, consultants are not permitted to take pictures of security checkpoints.

Consultants should be aware that there are individuals who engage in intelligence gathering for the purpose of subversion and espionage toward the

U.S. by talking with and questioning individuals who work on or near a U.S. military installation. A consultant should not provide any information if questioned about activities with the military or the mission/activities of the installation. Consultants who witness any suspicious behaviors should contact the military POC and MHN supervisor.

**6.20 Self-Promotion**

Consultants are prohibited from offering or marketing any personal business services or products to military personnel, family members or civilian staff.

Consultants are prohibited from the following activities:

- Giving seminars about MFLC work
- Using MFLC program materials/concepts in any seminar
- Sharing MFLC program information and/or materials outside of the program and for any reason unrelated to MFLC program needs
- Using e-mail signature or links to promote any commercial product or service via MFLC program email communication
- Promoting any personal or political stance via MFLC program e-mail communication

Consultants may not promote themselves for any non-program purpose using the MFLC role.

**6.21 Sexual Assault**

Any individual reporting sexual assault/rape must be referred to the Sexual Assault Response Coordinator (SARC) immediately. The consultant can then have no further discussion or contact with the individual regarding that issue.

### 6.22 Traveling with Family Members

MHN does not permit family members and friends to travel with consultants to assignment locations during the service period. Family members or friends may join the consultant following completion of the assignment. The primary focus of the time should be on the work assignment. Further,

- MHN is not financially responsible for any costs associated with family members including, but not limited to, travel, lodging and meals.
- Family members, friends and pets ARE NOT ALLOWED on an installation at any time.

### 6.23 Untoward Events

Definition for purposes of this assignment: Any unexpected, unusual event that produces adverse results or could potentially lead to an adverse situation. For example: When leaving the consultant's office after a consultation, a client slips and falls and is injured. All untoward events should be immediately reported to the consultant's MHN supervisor. **DO NOT LEAVE A VOICE MAIL MESSAGE.** If the supervisor is not available, the consultant should call (800) 646-5613 and ask to speak with a MHN representative. If after hours, the caller will be prompted by voice mail to call the cell phone of the MHN staff on call.

### 6.24 Use of Government Facilities

Consultants do not have access to the commissary or PX on the installations.

### 6.25 Working with Children

Some assignments involve providing educational/supportive services to children in groups

or with families. If this is the case, MHN will coordinate with the military POC to ensure that the child's parents have signed the appropriate release forms giving permission for their child to participate in the program. Consultants should not supervise an individual child or a group of children *under any circumstances*; there should always be other military or civilian staff on site. The military has strict guidelines regarding child to staff ratio, and consultants should never be counted in that ratio.

**6.26 Written Materials**

The military POC or MHN supervisor will provide all written materials such as presentations, power points, handouts, etc. The MHN supervisor must review any presentation materials provided to the consultant by the military POC. Consultants will not be able to use any of their own written materials or develop any new materials without approval from the MHN Director of Quality and the military POC. Consultants who are asked by a military POC to provide materials should contact the MHN supervisor.

## SECTION 7—ADMINISTRATIVE /BILLING AND REIMBURSEMENT

**7.1 Invoicing Process**

Consultants must submit invoices timely in the prescribed format as defined in this Section. The consultant must complete each invoice in its entirety, acquire a Community Officer's signature approval and submit the invoice and copies of any required receipts via fax to MHN using the fax number on the invoice. Consultant will retain the faxed invoice, any

required receipts and the fax document showing the date of successful fax transmission.

### 7.2 Prescribed Invoice Format

Invoice forms for MFLC services are available through our Provider Portal at **www.mhngs.com**.

Consultants should prepare invoices using the prescribed invoice form as specified below. *Consultants may not modify the layout of any invoice form*.

Table 1 *Prescribed Consultant Invoice Formats*

| **ROTATIONAL/FULLTIME** | |
|---|---|
| **TYPE OF ASSIGNMENT** | **INVOICE FORM** |
| Rotational Staffing (Hourly and Daily) | *MFLC Consultant Rotational/Fulltime Assignment Invoice for Hourly Assignments* (MHNGS Form ACC012) |
| 30-Day Rotational Staffing | *MFLC Consultant Rotational Assignment Invoice for 30, 45, 60 and 90 Day Rotational Assignments* (MHNGS Form ACC011) |
| 45-Day Rotational Staffing | |
| 60-Day Rotational Staffing | |
| 90-Day Rotational Staffing | |
| Area Coordinator | |

| | |
|---|---|
| Fulltime Counseling Services, Non-Medical Counselors | *MFLC Consultant Rotational/Fulltime Assignment Invoice for Hourly Assignments* (MHNGS Form ACC012) |
| Fulltime Counseling Services, Personal Financial Counselors | |
| **ON-DEMAND** | |
| **TYPE OF ASSIGNMENT** | **INVOICE FORM** |
| 2-Day Weekend Drill Support Staffing | *MFLC Consultant On Demand (2-Day Drill Weekend) Invoice* (MHNGS Form ACC013) |
| On-Demand Support Staffing | *MFLC Consultant On Demand (Hourly) Invoice* (MHNGS Form ACCO14) |

A separate instruction is available for each type of Consultant Invoice. Consultants should read the appropriate instructions and consistently apply this guidance when completing any invoice.

**7.3 Timely Submission of Invoices**

ROTATIONAL/FULLTIME ASSIGNMENTS. For a Rotational/Fulltime assignment (see Table 1—*Prescribed Consultant Invoice Formats*), Consultants must submit invoices biweekly (i.e., every two weeks)

during each assignment period using the biweekly periods prescribed in the *Assignment Orientation Packet*. Consultants must claim *all* services and expenses incurred during the biweekly period on the biweekly invoice. Consultants should submit only one invoice for a biweekly period. The Consultant should fax the completed biweekly invoice and copies of any required receipts to MHN no later than the second business day after the end of the biweekly period.

ON-DEMAND ASSIGNMENTS. For On-Demand assignments, (see Table 1—*Prescribed Consultant Invoice Formats*), Consultant must claim all services and expenses incurred during the on-demand assignment on the on-demand invoice. Consultants should submit only one invoice for an on-demand assignment. Consultants must fax or scan the completed on-demand invoice and copies of any required receipts to MHN no later than the second business day after the end of the on-demand assignment.

**Under no circumstances does MHN have an obligation to pay for any Consultant's services or expenses if Consultant fails to timely submit an invoice for such amounts. Any invoice submitted to MHN more than 30 (thirty) calendar days after the end of an assignment will be deemed not timely and none of the claimed amounts will be paid.**

**7.4 Payment for Professional Provider Services**
MHN payment for professional provider services will be paid at the rate specified in the Consultant Task Order (CTO) consistent with the scope of services requested in the CTO and the specified period of the assignment in the CTO. Consultant will not claim travel time except as explicitly authorized in the CTO and when claiming travel time, will do so in the form specified in the invoice instructions. Questions regarding rates, scope of services and assignment period should be directed to Professional Relations at **mflc.program@healthnet.com**.

**7.5 Payment for Airfare**
If authorized in the CTO, MHN is responsible for arranging and paying for all air travel. Airfare paid by a Consultant is not reimbursed. Consultant will pay for any upgrades, excess baggage fees or changes in itinerary not required by MHN.

**7.6 Payment for Rental Car**
For approved rental cars, authorized in the CTO, MHN is responsible for arranging and paying for all rental cars. Rental car expenses paid by a consultant are not reimbursable. Consultant must pay for vehicle upgrades, rental car insurance, fuel obtained from rental car company, and lost keys. Consultant will pay for all rental car expenses incurred for personal use.

**7.7 Payment for Lodging**
If authorized in the CTO, MHN is responsible for arranging and paying for all lodging.
If lodging is not authorized in the CTO, but the assignment is in support of USAREC, MHN may still authorize lodging if (i) the consultant is required to

travel to a location other than the Assignment location noted in the CTO, and (ii) when such travel requires an overnight stay.
Lodging expenses paid by a consultant are not reimbursed. Consultants will pay for any room upgrades, fees for additional guests and non-lodging expenses including (but not limited to) in-room movies, room service, mini bar, and/or damages to room(s) and contents.

If an urgent situation requires an overnight stay that was not pre-arranged, and this overnight stay has been preauthorized by MHN Clinical Supervisor or Manager, the consultant must contact the travel department for travel arrangements by calling (866) 468-7289. If arrangements are needed after normal business hours (Pacific Time), the consultant should press '3' and follow the prompts.

**7.8 Payment for Meals and Incidental Expenses**
Consultant will not claim reimbursement for the actual cost of meals and incidental expenses. If authorized in the CTO, MHN will pay the Consultant the prevailing Per Diem when Consultant assignment requires the use of MHN-provided lodging. Per Diem is a daily allowance paid in lieu of reimbursement for meals and incidental expenses that might be incurred by a Consultant while traveling to/from an assignment as well as during the assignment term.

The Per Diem (daily allowance) rate is determined by reference to the prescribed government per diem rate for the place the consultant travels to/works.

The Per Diem rate is limited to 75% of the applicable daily rate for the day of travel to an assignment and return travel from the assignment.

*Consultants will not be reimbursed for foreign transaction fees incurred on personal credit cards.* We recommend the use of local currency in order to avoid such transaction fees.

**7.9 Gifts**

In no event will Consultant provide gifts (including meals) to government personnel or those representing the government regardless of amount whether claimed for reimbursement or not. Violations constitute grounds for termination whether gifts were claimed for reimbursement or not.

**7.10 Business Expenses**

Consultant will not claim and MHN will not reimburse Consultant for any of the following expenses.

- Airline club membership dues
- Airphone charges
- Alcoholic beverages (when not part of client entertainment)
- Annual fees for personal charge cards
- ATM fees
- Baby-sitting fees
- Baggage fees
- Barber and hairdresser services
- Car washes
- Celebration expenses (cakes, cards, gifts, etc., for birthdays, births, anniversaries, etc.)
- Clothing
- Charge card late fees, finance charges, or foreign transaction fees
- Cost of faxing invoices to MHN

- Commuting costs from a personal residence less than 50 miles from the service location
- Country Club dues
- Expenses for companions/family members
- Expenses related to vacation or personal days while on a business trip
- Expenses related to booking or rebooking for consultant personal travel (extended assignment dates)
- Fees and tips given to porters, baggage carriers, bellhops, hotel maids, stewards or stewardesses and others on ships, and hotel servants in foreign countries
- Fingerprinting or criminal history background checks that may be required for certain assignments
- Flowers
- Gasoline charges assessed by rental car agency for not refueling vehicle
- Gasoline for a personally owned vehicle
- Gas, mileage or any other transportation costs associated with travel between MHN lodging and work site each day for rotational assignments
- Golf fees
- Gum or candy
- Health Insurance, including insurance that may be required for certain assignments
- Helicopter services for airport transfer
- Hotel refrigerator rental fees
- Hotel internet access fees
- Hotel safe rental fees
- Hotel telephone fees
- Hotel room upgrades
- Immunizations or inoculations that may be required or recommended for foreign travel,

unless otherwise pre-approved in writing by a MHNGS representative

- Laundry/valet services
- Loss/theft of travel advance money or Company-paid airline tickets
- Loss/theft of personal funds or property
- Lost baggage
- Luggage and briefcases
- Magazines, books, newspapers
- Medical bills
- Movies (including in-flight and hotel movies)
- Non-compulsory insurance coverage (annual fee)
- 'No show' charges for hotel or car service
- Optional travel or baggage insurance
- Parking or traffic tickets
- Personal accident insurance
- Personal entertainment, including sports events
- Personal property insurance
- Personal telephone calls
- Pet care/or pet relocation
- Prescriptions or over-the-counter medications
- Postage costs, outside of business purposes
- Repairs due to accidents on personal vehicles
- Routine maintenance/tune-ups of personal vehicles
- Sauna or massages
- Snacks
- Shoeshine
- Souvenirs/personal gifts
- Spouse/companion travel
- Tobacco products
- Toiletries such as toothpaste, razor, etc.
- Towing charges
- Travel costs to and from the airport

- Traveler Check Fees

Baggage fees
Travel costs to and from home to airport
Immunizations or inoculations that may be required or recommended for foreign travel, unless otherwise pre-approved in writing by a MHNGS representative
Health insurance, including insurance that may be required for certain assignments
Fingerprinting or criminal history background checks that may be required for certain assignments
Cost of faxing invoices to MHN
All purchases of office supplies to include business cards and flyers must be approved in advance by the MHN Clinical Supervisor/Manager. Consultant will not claim for reimbursement and MHN will not pay for any business expenses incurred for the purchase of office supplies, business cards and flyers when pre-approval was not obtained. Consultants must include pre-approval with the invoice when claiming these expenses.

All claims for reimbursement of business expenses must be accompanied by a receipt. Consultant will not claim and MHN will not reimburse any business expense that is not accompanied by a legible receipt.

**7.11 Personal Vehicle Usage**

**For assignments within 50 miles driving distance from the consultant's home, Consultant is required to have his or her own transportation available for driving to and from the assignment.** MHN's 50- mile policy applies to distance, regardless of commute time.

Use of POV for travel in lieu of air transportation requires pre-approval by MHN Professional Relations Representative. Approval will only be

granted if use of POV is less costly to MHN than air transportation or rental car.

If travel exceeds 50 miles one-way to the assignment location, MHN at its sole discretion will determine whether it is more cost effective to reimburse for mileage or to authorize air or a car rental. If reimbursement is the least costly, Consultant is required to have his or her own transportation available for driving to and from the assignment from home or approved lodging.
For travel to and from the airport for On-Demand Assignments, MHN will reimburse consultants' travel time each way, not to exceed three (3) hours, and for expenses associated with traveling to a from the airport, e.g., mileage, van pickup, bridge tolls, etc.

### 7.12 Specific Terms and Conditions for On-Demand Services

#### 7.12.1 Calculation of Payment

- Two-Day Drill Weekend consultants contracted for a two-day drill weekend shall be reimbursed for eight (8) hours for the first day regardless hours worked; and actual hours worked, up to eight hours, for the second day.
- One-Day Event - consultant shall be paid for actual hours worked up to eleven (11) hours.
- If the consultant works partial hours, the time on the invoice should be rounded up to the next half hour increment. For example: hours worked 2:00 pm to 4:15 pm would be rounded up to 2 hours and 30 minutes.

#### 7.12.2 Late Cancellations

If the consultant's On-Demand services are cancelled with less than 24 hours notice, the

consultant may bill MHN for half the scheduled on-site time. The consultant will not receive reimbursement for the proposed travel unless travel occurred prior to cancellation. Reimbursement will be in accordance with the provisions of the CTO and the MFLC Provider Manual.

**7.13 Contacts for Billing and Reimbursement Questions**

Consultants may request instruction on how to bill or information on rate of payment, scope of services and assignment period from Professional Relations by E-Mailing **mflc.program@healthnet.com**.

Consultants may submit questions regarding the status or accuracy of payment on invoices and expenses reports previously submitted by E-Mailing: **MHNGS.Administrative.Support@MHN.com**

**7.14 Provider Dispute Process**

Consultants may utilize the Provider Dispute Process described on www.mhn.com under 'Working with MHN' as a mechanism to dispute billing and payment decisions made by MHN. The Provider Dispute Process should not be used to seek resolution on other matters including network status, credentialing decisions or contracting issues including rates.

**7.15 Right of Set-off**

In relation to any collection and payment of monies owed by the Consultant to MHN, MHN shall have the right, after the 45th calendar day following MHN's submission of the reimbursement request to the Consultant or after the Consultant's appeal rights have been exhausted, to set-off any payments owed

to the Consultant against any funds owing by Consultant to MHN, provided that MHN submits to the Consultant an explanation in writing in sufficient detail so that Provider can reconcile each invoice.

## SECTION 8—TRAVEL

### 8.0 Summary of Policies regarding Mileage, Rental Car, and Lodging

The policies summarized below apply to all consultants operating under a Provider Services Task Order Agreement (PSTOA) and corresponding Rotational and On-Demand Consultant Task Order (CTO). Summaries refer to the approval language in the CTO (and accepted by MHN consultants). *Please refer to subheadings in this section for additional policy information. Note that consultants are contractually bound by all policies articulated in this manual.*

#### 8.0.1 Policy regarding rental car vs. mileage reimbursement for privately owned vehicle (POV)

a) MHN will approve a rental car for consultants who are approved for air travel to the service location.
b) If a consultant resides more than 50 miles from the service location, MHN will conduct a comparative cost analysis to determine whether car rental or POV mileage reimbursement is more cost effective. The lowest cost option for MHN shall be approved.
c) Consultants must have or must arrange their own transportation when service location is less than 50 miles from their residence.

d) If a consultant resides more than 50 miles (each way) from the service location and MHN determines that mileage reimbursement is less costly to MHN than a rental car, consultants are responsible for having or arranging their own transportation. MHN will not approve a rental car for reasons including but not limited to the consultant's lack of a POV, refusal to use a POV or concern about the drivability of a POV.

e) For On Demand events *only*, if the consultant resides more than 50 miles (each way) from the service location, MHN will waive the rental car requirement (if less costly than mileage reimbursement) and will authorize mileage if the consultant is contacted for the event less than 2 days prior to the start date and is unable to both pick-up the rental car and reach the event on time.

**8.0.2 Policy regarding mileage reimbursement for consultants driving a privately owned vehicle (POV)**

a) MHN will reimburse the consultant for mileage for trips during the day that are directly in support of MFLC services being rendered (`business travel').

b) MHN will reimburse consultants for mileage if commute from their residence to service location (each way) is greater than 50 miles and if mileage reimbursement is less costly to MHN than a rental car.

c) MHN will not reimburse for mileage if a consultant's commute from residence to

service location each way is less than or equal to 50 miles.

d) Mileage between lodging and service location is not reimbursable.
e) Mileage for personal travel is not reimbursable, Personal travel includes (but is not limited to): trips on weekends, weekend trips home and back if lodging is approved, or other personal travel not specifically related to the assignment.
f) Reimbursement shall be limited to the Internal Revenue Service mileage rate applicable on the respective days of business travel.

**8.0.3 Policy regarding gas reimbursement for consultants approved for a rental car**

a) MHN will reimburse consultants for gas for trips during the day that are directly in support of the services being rendered ('business travel').
b) MHN will reimburse consultants for gas used driving to and from their lodging/residence and service location each day.
c) Gas for personal travel is not reimbursable. Personal travel includes, but is not limited to trips on the weekend, weekend trips home and back if lodging is approved, or other personal travel not specifically related to the assignment.

**8.0.4 Policy regarding lodging stays**

a) MHN shall approve lodging for consultants who are approved for air travel to service location.

b) MHN will not approve lodging if the drive from a consultant's residence to the service location is 50 miles or less regardless of commute time.

c) Unscheduled Overnight Stays: As necessitated by special needs of the assignment, weather or travel delays and upon prior approval by Field Operations Supervisor, consultants may contact the Travel Department to obtain overnight lodging. Consultants will be paid 75% of one day's per diem to cover the cost of associated meals. This provision is applicable for assignments for which Provider is not already receiving a per diem and/or is pre-approved for scheduled lodging.

d) If a consultant elects to stay with friend/family member rather than MHN lodging, the consultant will not receive any additional payment in place of lodging.

**8.0.5 Policy regarding Per Diem payments:**

a) Consultants will receive a per diem if lodging is approved.

b) Consultants who are eligible for lodging will receive a per diem if staying with friend/family member in lieu of MHN lodging.

c) Consultants will not receive a per diem if neither circumstance above applies (other than the per diem payment specified in Paragraph D above Unscheduled Overnight Stays).

d) Per Diem payments, if authorized, are paid in accordance with the terms in the CTO.

**8.1 Travel Documents (OCONUS only)**
A valid U.S. passport and travel itinerary is required for all OCONUS travel. The DoD will issue an Invitational Travel Order (ITO). As part of the on-site orientation, consultants will also be issued a military base identification card. The consultant must keep this card secure and return the card at the end of each assignment; cards may not be used again. As applicable, ITO papers and the military identification card must be carried at all times.

**8.2 Travel Arrangements**
All travel arrangements are arranged through Cliqbook and are paid for by MHN through the Health Net travel department. ***Consultants are required to book travel within 24 hours of receipt of the Consultant Task Order (CTO).*** The consultant must contact the airline directly to request a change in seat assignment or apply or request an upgrade. *All upgrades are the financial responsibility of the consultant.*

**8.3 Emergencies**
During a travel period, if the consultant has an *emergency* situation, an 800 number is available for support as shown on the travel itinerary. *This service is for emergency situations only.*

In the event of a *true* emergency, MHN will allow the consultant to return home. MHN will pay for changes to the flight arrangements only if a *true* emergency exists. If MHN determines that the reason for return is not a *true* emergency, the cost of changing the flight arrangements will be the individual's responsibility.

For consultants who must return home in response to an emergency, but who then wish to continue the assignment:

- The consultant must pay his/her own airfare and associated costs
- Lodging will be discontinued while the consultant is away
- The consultant should submit a receiving report which details only actual hours worked
- Consultants should only invoice for hours worked
- The consultant should not bill for, and MHN will not pay, daily meals/incidentals/per diem during hiatus from assignment.
- Health Net Travel will determine whether it is more cost effective to continue any existing rental car contract, or whether the consultant should return the rental car to the renting facility. Airport parking fees will be the responsibility of the consultant.

## 8.4 Rental Cars

### 8.4.1 Policy regarding mileage reimbursement for consultants using an approved rental car

- MHN will reimburse consultants for gas for all work-related mileage.
- MHN will reimburse consultants for gas used in driving to and from lodging/hotel and service location each day.
- For those consultants driving an approved rental car and approved for lodging, MHN will reimburse for gas for one trip to the service

location and one trip home for each assignment.

- Personal travel is not reimbursable (i.e., trips on the weekend or weekend trips home and back).

**8.4.2 Additional policies regarding use of approved rental cars**

- It is not necessary to purchase any additional car insurance from the rental agency. Adequate insurance is included in the corporate arrangements for rental cars. Additional insurance, if selected, shall be the responsibility of the consultant.
- The fuel option should not be selected.
- The consultant is responsible for filling the tank prior to returning the car to the rental agency.
- Please double-check the fuel the rental car needs before refueling your car. You are responsible for the cost of the damage of the rental car if you put wrong fuel in the car.
- Cars should be inspected carefully at time of rental and all scratches and dents should be documented. Cars should be returned in good condition. If not, excessive wear and tear may be the responsibility of the consultant.
- Please note that many countries issue speeding tickets from video cameras, which are then sent to Health Net. If a parking or speeding ticket is received, you are responsible for these charges.
- Hertz GPS is not guaranteed unless otherwise stated by a TEAM Supervisor/Manager in writing (i.e., via E-Mail) that you specifically need this feature for business purposes.

Consultants are responsible for any and all costs associated with unapproved GPS.

### 8.4.3 Policy regarding mileage reimbursement for consultants driving a privately owned vehicle

- Consultants will receive reimbursement for mileage for business related travel as approved by MHN.
- MHN payment for authorized use of a privately owned vehicle (POV) is limited to business mileage at the prevailing Internal Revenue Service (IRS) mileage rate.
- A consultant may not claim mileage for commuting if distance traveled is less than 50 miles. Commuting is defined as driving between home and assignment location (one-way).
- Consultants may claim mileage reimbursement for driving POV from home to airport regardless of distance when total expenses (inclusive of airport parking) are reasonable when compared to use of taxi/shuttle service.
- For consultants who have been approved for lodging, MHN will reimburse for mileage from lodging to service location each day if using POV.

## 8.5 Travel Support

If any changes to travel, lodging or rental car are needed once travel has been initiated, the consultant must contact the MHN supervisor or AC, if applicable, via phone or E-Mail as soon as possible. The supervisor/AC will need to make the necessary arrangements and adjustments in order to make certain travel and lodging are paid correctly, and will

confirm approval in writing. Otherwise, the consultant may be responsible for additional charges. Note that all costs associated with unapproved changes will be the responsibility of the consultant.

### 8.6 Hotels and Lodging

A hotel stay will be approved in all cases where transportation to the assignment requires air travel. Hotel stays may also be approved if the consultant's driving distance exceeds 50 miles each way. Hotel stay during assignment will *not* be approved for consultants driving less than 50 miles each way. regardless commute time.

For approved unscheduled overnight stays, MHN will pay for lodging and 75% of one-day's per diem to cover meals associated with the overnight stay. This provision is applicable only if the consultant is not receiving a per diem payment for the assignment, and only if the overnight stay is pre-approved by MHN.

All approved lodging is arranged and paid for by MHN through the Health Net travel department. Health Net Travel will select consultant lodging based upon corporate travel policy. Hotel location will not be chosen according to consultant preference and hotel assignment may not be changed based upon consultant preference. Approved hotels may not be pet-friendly; therefore, consultants will not be permitted to bring pets along to assignment unless accommodations assigned by Health Net Travel permit pets. (Note that consultants may not choose accommodations based upon the lodging's pet policy. Any expenses associated with pets are the consultant's responsibility.)

**8.7 Extending Travel for Non-Business Purposes**

Travel to and from assignment will be booked by Health Net travel according to assignment dates on the Consultant Task Order (CTO). Costs associated with extending travel for non-business purposes are the responsibility of the consultant, including any penalties incurred as a result of changes to travel arrangements made by MHN.

**8.8 Packing and Luggage**

It is important for the consultant to consider carefully what to pack, assuring wardrobe sufficiency while keeping in mind management of luggage. Each consultant is responsible for carrying his or her own luggage under *all circumstances without accommodation.* Many OCONUS assignments involve train travel and airports without easy access to elevators. Weight limits vary by airline and country. Consultants should contact their airline(s) prior to traveling to obtain current weight restrictions for all planned travel locations. (See *specific baggage policy under section 7, number 7.5.*)

**8.9 Health Insurance**

Each consultant is responsible for his/her own health insurance. Costs associated with illness are the responsibility of the consultant. Consultants injured while at work on an On-Demand or CONUS Rotational Assignment are also responsible for the medical costs associated with the injury. Consultants injured while at work on an OCONUS Rotational Assignment are covered by the Defense Base Act insurance. Such incidents should be reported to the MHN supervisor immediately.

**8.10 Required Inoculations**

MHN shall notify consultants in advance if any inoculations are required for a specific assignment.

## SECTION 9—APPENDIX

### 9.1 Important Contact Information

**CONUS MFLC Program Main Number**
(800) 646-5613
(972) 550-2584 (fax)

**Travel Department**
(866) 468-7289 (toll free)
After hours, select option '3'and wait for the prompt

**MHN Government Services Corporate Office**
2370 Kerner Blvd
San Rafael, CA 94901

**Professional Relations**
MHN
P.O. Box 10086
San Rafael, CA 94912
(800) 541-3353
866-581-9533 (fax) General Information E-Mail:
**mflc.program@healthnet.com**

### 9.2 Definition of Terms

**ACS:** Army Community Services

**A&FRC:** Airman and Family Readiness Center

**ACSO (ACS Officer):** Ranking ACS Office. Oversees Consultant duties on post.

**BOG: Boots on (the) Ground:** Number of Troops available

**Brief (or Briefing):** Giving specific instructions or information.

**CONUS:** Continental United States

**DA:** Department of the Army

**De-Mobilization (DMOB):** The process of transitioning a conflict or wartime military establishment or unit to a pre-deployment state.

**Deployment:** The relocation of forces and materiel to desired operational areas. Deployment encompasses all activities from origin or home station through destination, specifically including intra-continental United States, intertheater, and intratheater movement legs, staging, and holding areas.

**DoD:** Department of Defense

**Down Range:** physically in a combat zone or deployed from home base.

**FFSC:** Fleet and Family Service Center (Navy)

**IMA:** Installation Management Agency

**IMA-E (or IMA-Eur):** Installation Management Agency Europe

**In Country:** physically in a combat zone, see also 'Down Range'

**KIA:** Killed in Action

**MFLC:** Military and Family Life Counseling/Consultant

**Mobilization (MOB):** The process by which the Armed Forces or part of them are brought to a state of readiness for war or other national emergency. This includes activating all or part of the Reserve or Guard Components as well as assembling and organizing personnel, supplies, and material; the time when troops are mobilized for deployment.

**MOS:** Military One Source; Military Occupational Specialty (Job Classification)

**OCONUS:** Outside (the) Continental United States, including Alaska, Hawaii and Puerto Rico

**OEF:** Operation Enduring Freedom

**OFP:** Office of Family Policy

**OIF:** Operation Iraqi Freedom

**OSD:** Office of the Secretary of Defense

**POC:** Point of Contact

**R&R:** Return & Reunion Brief

**Re-Deployment:** The transfer of forces and materiel to support another joint force commander's operational requirements, or to return personnel, equipment, and materiel to the home and/ or demobilization stations for reintegration and/or out-processing.

**SITREP:** Situation Report

**SOP:** Standard Operating Procedure

**State Side:** The United States. Troops stationed in the United States

**Theater:** The geographical area outside the continental United States for which a commander of a combatant command has been assigned responsibility. The area of air, land, and water that is, or may become, directly involved in the conduct of the war.

**TRICARE:** Medical and Behavioral health insurance for troops and their families

**WIA:** Wounded in Action

### 9.3 Helpful Web Sites

**http://www.au.af.mil/au/awc/awcgate/awc-port.htm**

Air War College Military Quick-Portal - multiple links for all BOS

**http://www.defenselink.mil/**

Part of DOD

**http://www.dtic.mil/doctrine/jel/doddict/**

DoD list of military terms

**http://www.military.com/**

Online news-magazine

**http://www.nmfa.org/site/PageServer**

National Military Family Association

**http://www.militarychild.org/**

Military Child Education Coalition

**http://www.militarycity.com/**

Media times for all BOS

**http://merin.ndu.edu/**

Military Policy Awareness Links - MIPALs - which provide direct access to defense-related U.S. policy statements on selected key topics.

**http://www.militarywoman.org/**

Women in the military

**http://www.stripes.com/**

Military newspapers sent to military personnel overseas

**http://members.aol.com/forvets/insig/undec.htm**

Describes all BOS medals, citations, decorations

**http://www.2aces.com/endter/milfam.html**

provides various links for families

OCONUS:

www.gettingaround.net (A guide to U.S. military installations in Europe.
Go to Web Site and click on icon for **USAREUR**)

www.per.hqusareur.army.mil/reintegration/
(Provides information regarding Reunion and Reintegration issues for military members and their families)

### 9.4 Forms

Various forms may be required according to the CTO, including, but not limited to:

- Activity Form (available online)

- Expense Report
- After Event Summary
- Invoice

**[MHN Military Family Life Consultants]**

## MILITARY AND FAMILY LIFE CONSULTANT PROGRAM SUMMARY

The DoD (Department of Defense) is committed to supporting military families, recognizing that service to our nation places a heavy demand on these families. As a behavioral health subcontractor for the DoD, MHN Government Services is currently offering practitioners a unique opportunity to support Service members and their families.

The MFLC program was piloted under the name Military Family Life Consultant in 2004 to meet the specific need of providing supplemental services to families of extended 1st Armored Division Soldiers. The success of the program in United States Army/Europe has resulted in expansion of MFLC services for all Military Services within the continental United States, Alaska, Hawaii, Europe and the Pacific Rim.

The MFLC program is contracted through the Office of the Secretary of Defense. MFLCs work at military installations both stateside and overseas, assisting Service members and their families with a variety of issues, through the cycles of deployment and reintegration back to their families and communities.

The program was designed to deliver short term, situational, problem-solving non-medical counseling services. MFLC support addresses issues that occur specifically within the military lifestyle and helps Service members and their families cope with normal reactions to the stressful/adverse situations created

by deployments and reintegration. The services of MFLCs are intended to augment existing military counseling services.

**Role of Consultants**

The consultants' role in this program is unique in that they are not working as traditional therapists. The primary MFLC role is to assess needs, provide support or refer to appropriate resources as necessary. Assisting a Military Service member and/or family in developing an action plan to address a problem is a key component of the program. All consultants work under the direction of an MHN clinical supervisor and a military point of contact (POC).

Although locations, programs and commitment length vary, practitioners on rotational assignments are typically asked to make a 30-90 day time commitment to the assignment. (We have an increasing need for practitioners willing to accept 60-day assignments.) On Demand assignments also include non-medical counseling support and psychoeducational presentations and primarily support National Guard/Reserve Component Service members and their families. On Demand services are typically required on weekends, at National Guard Drill Centers or Reserve Centers. Acceptance of any assignment is voluntary; there is no obligation to commit.

**To be considered for the DoD Network, consultants must meet the following minimum qualifications:**

- **Have a valid state license as an independent behavioral health care practitioner. *Providers eligible for network participation are:*** Psychologists, Social Workers, Professional Counselors, Marriage Family Therapists, Registered Nurses (with psychiatric specialty).
- Professional liability insurance of at least $1 million/$1 million
- Possession of an active U.S. Passport; (or be willing to acquire one before assignments outside the United States)
- Must have or be able to acquire Social Security card
- Valid driver's license and willingness to drive at assigned locations
- Ability to drive a standard transmission vehicle if interested in working overseas
- May not be currently employed by a behavioral health care plan
- Must have a valid email address and frequent computer access
- Must physically be able to carry one's own luggage through travel process, and be willing and able to walk and be physically active while on bases

**Preferred Direct Practice Experience. You must have three of the following:**

- Training and experience in rapid assessment and problem resolution (e.g. EAP)
- Ability to work in various environments helping people identify problems and develop action plans

- Experience working with children and adolescents
- Experience working with couples and families
- Experience working with grief and loss
- Experience with Veterans or Veteran Affairs
- Experience working with military personnel and families
- Experience working in school systems

**Participation in the program is contingent upon:**

- Recommendation of the Clinical Director following a personal interview
- Meet MHN's credentialing requirements
- Passing a criminal history and background check
- Compliance with MFLC training program

If you meet all of the minimum qualifications, possess three or more Preferred Direct Practice Experience requirements and would be interested in participating in this program, please complete the MFLC questionnaire and send it, **along with a current copy of your resume, via e-mail, to mflc.program@healthnet.com**

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Attorneys for Defendants
MHN GOVERNMENT SERVICES, INC. and
MANAGED HEALTH NETWORK, INC.

The Honorable
Susan Y. Illston

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

| | |
|---|---|
| THOMAS ZABOROWSKI and VANESSA BALDINI, on behalf of themselves, and all others similarly situated,<br><br>Plaintiffs,<br><br>v.<br><br>MHN GOVERNMENT SERVICES, INC. and MANAGED HEALTH NETWORK, INC.,<br><br>Defendants. | Case No. 3:12-cv-05109-SI<br><br>**CLASS ACTION**<br><br>**DECLARATION OF DENA MADDOX IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS PENDING ARBITRATION**<br><br>Date: December 7, 2012<br>Time: 9:00 a.m.<br>Courtroom: 10<br>Judge:Honorable Susan Illston |

I, Dena Maddox, hereby declare:

1. I am the Vice President, Professional Relations for MHN Government Services, Inc. ('MHNGS') and I make this declaration in support of Defendants' Motion to Compel Arbitration and Stay Proceedings Pending Arbitration. The facts set forth in this declaration I know to be true of my own personal knowledge. If called as a witness I could and would testify competently to the matters set forth in this declaration.

2. Due to my role as Vice President, Professional Relations, I am familiar with the qualifications that Military and Family Life Consultants ('MFLCs') must meet in order to join MHNGS's MFLC network. I am also familiar with documents related to independent contracts for MFLCs, including the purpose, content and use of the Provider Services Task Order Agreement ('PSTOA'), which is the standard contract used by MHNGS to contract with credentialed counselors who will provide MFLC services.

3. MHNGS contracts with the U.S. Department of Defense ('DOD') to provide military service members and their families with access to a global network of highly experienced, licensed service providers ('MFLCs') who offer confidential life-skills counseling services.

4. MHNGS has contracted with more than 5,000 MFLCs who are highly-mobile and work at military installations throughout the world,

sometimes traveling frequently on a rotational basis to provide these temporary services.

5. MHNGS engages independent, highly-trained professionals to meet the DOD's needs. To qualify for engagement, all MFLCs must be highly educated and have professional licenses that require advanced training and graduate degrees. These qualifications are necessary to ensure that MFLCs can fully understand their unique mission and what is within the specific scope of services they have contracted to provide to the military.

6. MFLCs participate in short-term, rotational engagements at military sites. The short-term rotational nature of the MFLCs' engagements is designed to ensure that the counseling provided has both the appearance and reality of being confidential, independent, and detached from the military leadership at each installation so that service members and their families feel comfortable using the services provided.

7. Plaintiff Thomas Zaborowski contracted with MHNGS to provide MFLC services. Plaintiff Zaborowski signed a PSTOA on July 1, 2010. Attached herein as Exhibit A is a true and correct copy of the PSTOA Plaintiff Zaborowski signed.

8. Plaintiff Vanessa Baldini contracted with MHNGS to provide MFLC services. Plaintiff Baldini signed a PSTOA on December 4, 2008. Attached herein as Exhibit B is a true and correct copy of a PSTOA Plaintiff Baldini signed.

9. MFLCs also own and operate private consulting businesses.

10. For example, at the time Plaintiff Baldini entered the MHNGS network, she represented that she maintained a private practice and was accepting new patients. Attached herein as Exhibit D is a true and correct copy of the credentialing questionnaire that Vanessa Baldini completed to enter into MHNGS's network, with personal identification information redacted.

11. Similarly, Plaintiff Zaborowski represented that he was providing independent consulting services to mental health providers on behavioral health issues. Attached herein as Exhibit C is a true and correct copy of the credentialing questionnaire that Thomas Zaborowski completed to enter into MHNGS's network, with personal identification information redacted.

12. Given the level of skill and professional credentials that the MFLCs must have to join MHNGS's network, recruiting them is highly competitive. MHNGS is not alone in the market and competes fiercely with other provider networks to recruit licensed counselors. It is a 'seller's market'—as the sellers of their expertise and services, the licensed counselors whom MHNGS seeks to engage are able to pick and choose from among many provider networks and the opportunities the networks offer.

13. This is true not only in the market generally, but also within the scope of the

Department of Defense's MFLC program. MHNGS competes directly with a number of other providers to fill MFLC rotations throughout the U.S. and the world. Competition is even greater for highly-specialized engagements in more challenging locations, such as Djibouti, Africa, since fewer licensed counselors are qualified for and interested in those engagements.

14. Licensed counselors can pick and choose their engagements and ultimately have a variety of options when determining how, when, whether, or where to provide their services. They can provide services as contractors for MHNGS, for other providers, through their own private practices, or not at all. In addition, if MHNGS contacts them regarding an available engagement, the MFLC can decline for any reason, such as if they do not like the timing or the location.

Dated: November 1, 2012

By: _____
Dena Maddox

**Exhibit C to Declaration of Dena Maddox**

**CAQH Data Summary as of 07/01/2010**
**Zaborowski, Thomas M Clinical Social Worker**
**CAQH Provider ID 12119335**

**Prepare**

Provider Type:
**Clinical Social Work**
Hospital-based provider: **No**

Primary Practice State-Desc: **MN**

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**Personal Information**

Last Name: **Zaborowski**
First Name: **Thomas**
Middle Name: **M**
Suffix:
Spouse Last Name (optional):
Spouse First Name (optional):
Gender: **Male**
Date of Birth: **[Redacted]**
Birth City: **[Redacted]**
Birth Country:**[Redacted]**
Birth State: **[Redacted]**
SSN: **[Redacted]**
U.S. Citizen: **Yes**
Address: **[Redacted]**
City: **[Redacted]**
Zip Code **[Redacted]**
State: **[Redacted]**
Country: **[Redacted]**
Province: **[Redacted]**
Address: **[Redacted]**
Home Phone Number: **[Redacted]**
City: **[Redacted]**
Zip Code: **[Redacted]**
Country: **[Redacted]**
State: **[Redacted]**
E-mail Address: **[Redacted]**
Province: **[Redacted]**
Preferred Mailing Address: **Home**
Do you speak a language other than English with sufficient fluency to treat patients who speak only that language: **No**
Pager Number

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**Professional Identifications Numbers**

UPIN:
State: **MN**
Date Issued: **06/06/1990**
License Status: **Active**
State: **MN**
Date Issued: **01/04/1991**
License Status: **Active**

NPI:
License Number: **07906**
Expiration Date: **12/31/2010**

License Number: **2172**
Expiration Date: **01/31/2011**

---

**Education**

Country: **United States**
Address: **[Redacted]**
City: **[Redacted]**
Postal Code: **[Redacted]**
Phone Number (if known):
From: **06/01/1980**
Degree: **MA**
Date Issued:

Professional School: **Saint Mary's College**
Suite/Building #:
State: **[Redacted]**
Province:
Fax Number (if known):
To: **12/18/1983**
ECFMG Number:
Valid Through:

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**Training Information**

Do you have any current support certifications (BLS, CPR, ACLS, ATLS, etc.)? **No**

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**Specialty Information**

Primary Specialty: **Social Worker, Clinical**

Primary Specialty Initial Certification Date: **06/06/1990**

Last Recertification Date (if applicable): **12/31/2008**

Expiration Date (if applicable): **12/31/2010**

Name of Certifying Board: **Minnesota Board of Social Work**

If not certified, please state your intent for certification and describe the status of your efforts and eligibility, including scheduled date of exams, if any.

Secondary Specialty: **Other, Not Listed**

Secondary Specialty Initial Certification: Date: **01/04/1991**

Last Recertification Date (if Applicable): **01/31/2009**

Expiration Date (if applicable) **01/31/2011**

Name of Certifying Board: **Minnesota Board of Psychology**

If not certified, please state your intent for certification and describe the status of your efforts and eligibility, including scheduled date of exam, past failures of written or oral exams, if any.

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**Practice Locations**

Please indicate if this is your primary office location: **Primary Practice**
Office Street Address: **[Redacted]**
City: **[Redacted]**
Zip Code: **[Redacted]**
Office Phone Number: **[Redacted]**
Federal Tax ID Number: **38-9468900**
Currently practicing at this location? **No**
Do you intend to practice as:
Primary Specialty: **Social Worker, Clinical**

Physician Group/Practice name to appear in directory: **Thomas Zaborowski**
Suite, Department, etc.
State: **[Redacted]**
ZIP+4: **[Redacted]**
Fax Number: **[Redacted]**
E-mail Address: **[Redacted]**
Expected Start Date:

Provide a narrative description of your clinical practice including special interests: **My specialties are working with individuals and families in rapid assessment and problem resolution, developing action plans, grief/loss and as an advisor to schools.**

| | |
|---|---|
| Is over 50 percent of your practice primary Care? **No** | |
| Will you continue to practice at this Location? **No** | If no, last date of employment: **06/30/2010** |
| Credentialing Contact Last Name: **Zaborowski** | First Name: **Thomas** |
| Middle Initial: **M** | Phone Number: **[Redacted]** |
| Fax Number: | E-Mail Address: **[Redacted]** |
| Street Address: **[Redacted]** | Suite, Department, etc. |
| City: **[Redacted]** | State: **[Redacted]** |
| ZIP Code: **[Redacted]** | |
| Billing Contact: | |
| Billing Name: **Thomas Zaborowski** | Last Name: **Zaborowski** |
| First Name: **Thomas** | Middle Initial: **M** |
| Street Address: **[Redacted]** | Suite, Department, etc. |
| City: **[Redacted]** | State: **[Redacted]** |
| ZIP Code: **[Redacted]** | Office Phone Number: **[Redacted]** |
| Fax Number: | |

**Hospital Information**

| | |
|---|---|
| If no hospital privileges, describe method/coverage for continuity of care: | **Currently I do consulting work and do not provide direct services to patients.** |

**Insurance Information**

Insurance Carrier Name:
**Not Insured**
State:
To:
Suite/Building #:
Province:
Expiration Date:
**04/23/2007**

Insurance Carrier Name:
**Not Insured**
State:
To:
Suite/Building #:
Province:
Expiration Date:
**04/23/2007**

**Work History Information**

Organization Name/Activity:
**Behavioral Health Consultant**
Suite/Building #:
**[Redacted]**
State: **[Redacted]**
Province: **[Redacted]**
Phone Number:
**[Redacted]**
From: **05/01/2007**
Reason for Leaving:
**Currently consulting to mental health providers on behavioral health issues.**
Contact First Name:
**[Redacted]**

Address: **[Redacted]**
City: **[Redacted]**
Postal Code:
**[Redacted]**
Country: **[Redacted]**
Fax Number (if known): **[Redacted]**

To:

Contact Last Name:
**[Redacted]**
Clinic Still Open? **Yes**

Organization Name/Activity: **Valeo Behavioral Health Care**
Suite/Building #: **[Redacted]**
State: **[Redacted]**
Province: **[Redacted]**
Phone Number: **[Redacted]**
From: **01/15/2001**
Reason for Leaving: **Provide consulting to behavioral health care organizations.**
Contact First Name: **[Redacted]**

Address: **[Redacted]**
City: **[Redacted]**
Postal Code: **[Redacted]**
Country: **[Redacted]**
Fax Number (if known): **[Redacted]**

To: **04/23/2007**

Contact Last Name: **[Redacted]**
Clinic Still Open? **Yes**

Organization Name/Activity: **Family and Children's Services**
Suite/Building #: **[Redacted]**
State: **[Redacted]**
Province: **[Redacted]**
Phone Number: **[Redacted]**
From: **08/01/1996**
Reason for Leaving: **Clinic closed**
Contact First Name: **[Redacted]**

Address: **[Redacted]**
City: **[Redacted]**
Postal Code: **[Redacted]**
Country: **[Redacted]**
Fax Number (if known): **[Redacted]**

To: **07/31/2000**

Contact Last Name: **[Redacted]**
Clinic Still Open? **No**

Organization Name/Activity: **Southern Nevada Mental Health Services**
Suite/Building #: **[Redacted]**
State: **[Redacted]**
Province: **[Redacted]**
Phone Number: **[Redacted]**
From: **08/15/1995**
Reason for Leaving: **Offered employment with Family and Children's Services which was closer to parents/relatives (Wisconsin)**
Contact First Name: **[Redacted]**

Address: **[Redacted]**
City: **[Redacted]**
Postal Code: **[Redacted]**
Country: **[Redacted]**
Fax Number (if known): **[Redacted]**
To: **08/14/1996**
Contact Last Name: **[Redacted]**
Clinic Still Open? **Yes**

Organization Name/Activity: **Relate Counseling Center**
Suite/Building #: **[Redacted]**
State: **[Redacted]**
Province: **[Redacted]**
Phone Number: **[Redacted]**
From: **03/01/1981**
Reason for Leaving: **Opportunity for professional growth and higher salary**
Contact First Name: **[Redacted]**

Address: **[Redacted]**
City: **[Redacted]**
Postal Code: **[Redacted]**
Country: **[Redacted]**
Fax Number (if known): **[Redacted]**

To: **07/31/1995**

Contact Last Name: **[Redacted]**
Clinic Still Open? **Yes**

From: **08/01/2000**
Explain: **Interviewed for position and was offered employment with Valeo Behavioral Care Topeka, Kansas. Several trips were made to meet stakeholders and assess community needs during the last three months of 2000.**

To: **01/01/2001**

**References**
**Information**

First Name: **[Redacted]**
Title: **Board President**
Address: **[Redacted]**
City: **[Redacted]**
Postal Code: **[Redacted]**
Country: **[Redacted]**
Fax Number: **[Redacted]**

Last Name:
**[Redacted]**
Facility Name: **Valeo Behavioral Health Care**
Suite/Building #:
**[Redacted]**
State: **[Redacted]**
Province: **[Redacted]**
Phone Number:
**[Redacted]**
E-Mail Address:
Suite/Building #:
**[Redacted]**

First Name: **[Redacted]**
Title: **Clinical Social Worker**
Address: **[Redacted]**
City: **[Redacted]**
Postal Code: **[Redacted]**
Country: **[Redacted]**
Fax Number: **[Redacted]**

Last Name:
**[Redacted]**
Facility Name:
**Shunga Creek Menatl[sic]Health Center**
Suite/Building #:
**[Redacted]**
State: **[Redacted]**
Province: **[Redacted]**
Phone Number:
**[Redacted]**
E-Mail Address:
Suite/Building #:
**[Redacted]**

First Name: **[Redacted]**
Title: **Medical Director**
Address: **[Redacted]**
City: **[Redacted]**
Postal Code: **[Redacted]**
Country: **[Redacted]**
Fax Number: **[Redacted]**

Last Name:
**[Redacted]**
Facility Name:
**Wyandot Center**
Suite/Building #:
**[Redacted]**
State: **[Redacted]**
Province: **[Redacted]**
Phone Number:
**[Redacted]**
E-Mail Address:
Suite/Building #:
**[Redacted]**

**Disclosure information**

1. Has your professional license or registration ever been terminated, stipulated, restricted, limited, conditioned, suspended, revoked, refused, voluntarily relinquished or not renewed by any licensing board or any health-related agency organization, or is there a review pending? **No**

2. Has your professional license or registration ever been investigated or is it currently being investigated and, if so, what were the results? **No**

3. Has your DEA registration ever been revoked, suspended, limited, or conditioned in any way, or have you voluntarily relinquished your DEA registration, or is there a review pending? **No**

4. Has you membership, participation, clinical privileges, or employment ever been denied, terminated, stipulated, restricted, refused, limited, suspended, revoked, or not renewed by any peer review organization, third party payer, clinic, hospital, medical staff, or any health-related agency or organization, or is there a review pending? **No**

5. Have you ever voluntarily relinquished your membership, participation, clinical privileges or request for privileges, employment, professional license, or registration in lieu of disciplinary action, or prior to or during an investigation into your professional conduct or competency? **No**

6. Have you ever involuntarily relinquished your membership, participation, clinical privileges or

request for privileges, employment, professional license or registration? **No**

7. Has your membership or fellowship in any professional organization or your specialty board certification ever been voluntarily or involuntarily denied, terminated, restricted, limited, suspended or revoked? **No**

8. Have you ever been reprimanded, censored, or otherwise disciplined by, or have you ever been subject to a corrective action agreement/plan with any licensing board, peer review organization, third party payer, clinic, hospital, medical staff, or any health-related agency or organization? **No**

9. Has your certificate or participation in any private, federal (i.e. Medicare, Medicaid, etc.) or state health insurance program ever been revoked or otherwise limited or restricted, or is any investigation or proceeding with respect to any such action presently underway? **No**

10. Are there any charges pending or are you currently charged with or have you ever been indicted or found guilty of a felony, gross misdemeanor, misdemeanor (other than a minor traffic violation) or other offense? **No**

11. Have you ever been found liable, guilty, or responsible for sexual impropriety or misconduct or sexual harassment with a patient, co-worker, or other? **No**

12. Have you ever had any professional liability claims or lawsuits brought against you, including pending claims or lawsuits, dismissed or dropped claims or lawsuits, settlements or final judgements? **No**

13. Has your professional liability carrier ever refused or canceled your coverage or excluded you from performing any specific privileges within your specialty? **No**

14. Have you ever practiced within your profession without professional liability insurance? **No**

15. Do you have a physical or mental condition that would affect your ability, with or without reasonable accommodation, to provide appropriate care to patients and otherwise perform the essential functions of a practitioner in your area of practice without posing a health or safety risk to your patients? **No**

16. Does your use (or have you been told that your use) of alcohol or drugs affect your ability, with or without reasonable accommodation, to provide appropriate care to patients and otherwise perform the essential functions in your area of practice without posing a health risk to your patients? **No**

17. Are you currently using illegal drugs? ('Currently' means sufficiently recent to justify a reasonable belief that the use of drugs may have an ongoing impact on one's ability to practice medicine. 'Illegal use of drugs' refers to drugs whose possession or distribution is unlawful under the Controlled

Substances Act, 21 U.S.C. sec. 812.22., it 'does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provision of Federal law.' The term does include, however, the unlawful use of prescription controlled substances.) **No**

Additional Explanation

I have been working as a mental health Consultant since I left Valeo BHC in April of 2007. I provided these services from my home in Las Vegas. From 1995 to 2001 I was in Supervisory roles in mental health facilities providing leadership, education, training and administrative duties. I did not carry Professional Liability Insurance since I did not provide direct clinical services to clients. While at Relate Counseling Center in Minnesota I did provide direct clinical services to clients after becoming licensed as a LICSW (Licensed Independent Clinical Social Worker) in June 1990 (MN07906) and as a Licensed Psychologist in January 1991 (LP2172) and carried Professional Liability Insurance ($1M). I have maintained both of these licenses. I am applying for a Military & Family Life Consultant position with MHN. If hired, I will obtain $1M Professional Liability Insurance.

My specialties are working with individuals and families in rapid assessment and problem resolution, developing action plans, grief/loss and as an advisor to schools.

Thank you,

Thomas Zaborowski

**Exhibit D to the Declaration of Dena Maddox**

**CAQH Data Summary as of 10/24/2011**
**Baldini, Vanessa D Marriage/Family Therapist**
**CAQH Provider ID 12200408**

**Prepare**

Provider Type: **Marriage/Family Therapist**
Hospital-based provider: **No**
Primary Practice State-Desc: **CA**

---

**Personal Information**

Last Name: **Baldini**
First Name: **Vanessa**
Middle Name: **D**
Suffix:
Have you used other names? **No**
Birth Date: **[Redacted]**
Birth City **[Redacted]**
Birth State:**[Redacted]**
Birth Country: **[Redacted]**
Gender: **Female**
FNIN:
SSN: **[Redacted]**
Non-English languages: **Spanish**
Address: **[Redacted]**
City: **[Redacted]**
State: **[Redacted]**
Zip Code: **[Redacted]**
Phone Number: **[Redacted]**

---

**Professional Identification Numbers**

State License Number: **MFT35441**
License Status: **Active**
Current Practice State: **Yes**
Expiration Date: **01/12/2012**
Do you have a State Controlled Substances Registration Certificate?: **No**
Medicare: **No**
Medicaid: **No**
Do you have a UPIN: **No**
ECFMG Number: **No**
NPI: **1376677302**

License Type: **MFT**
License State: **CA**
Issue Date: **01/12/1999**
DEA Number?: **No**

UPIN
ECFMG Issue Date:

**Education**

Graduate Type:
**US/Canadian Graduate**
Professional School:
**California State University, Northridge**
Suite/Building #:
State: **[Redacted]**
Province: **[Redacted]**
Phone:
Affiliated University:
Professional School Start Date: **08/1994**
Education completed at this school: **Yes**

Address: **[Redacted]**
City: **[Redacted]**
Postal Code: **[Redacted]**
Fax: **[Redacted]**
Degree: **MS**
Professional School End Date: **06/1996**
Do you have other relevant education for which a degree was obtained? **Yes**

Institution/School Name:
**Santa Monica College**
Suite/Building #
State: **[Redacted]**
Country: **[Redacted]**
Phone: **[Redacted]**
Degree: **AA**
End Date: **05/1992**

Address: **[Redacted]**
City: **[Redacted]**
Province: **[Redacted]**
Postal Code: **[Redacted]**
Fax:
Start Date: **02/1991**
Did you complete the degree at this institution? **Yes**

| | |
|---|---|
| School Name: **California State University Northridge** | Address: **[Redacted]** |
| Suite/Building #: | City: **[Redacted]** |
| State: **[Redacted]** | Province: **[Redacted]** |
| Country: **[Redacted]** | Postal Code: **[Redacted]** |
| Phone: | Fax: |
| Start Date: **06/1992** | End Date: **06/1994** |
| Degree: **BA** | Did you complete your undergraduate education at this school? **Yes** |

**Training Information**

Institution/Hospital Name: **Friends of the Family**
Institution/Hospital Address: **[Redacted]**
City: **[Redacted]**
Postal Code: **[Redacted]**
Country: **[Redacted]**
Fax:
End Date: **10/1997**
Affiliated University

If not, please explain.
Institution/Hospital Name: **Valley Women's Center**
Institution/Hospital Address: **[Redacted]**
City: **[Redacted]**
Country: **[Redacted]**
Fax:
End Date: **02/1998**
If not, please explain.

Department: **Psychotherapy**
Suite/Building #: **[Redacted]**
State: **[Redacted]**
Province: **[Redacted]**
Phone: **[Redacted]**
State Date: **11/1995**
Program Director Name: **[Redacted]**
Did you complete the training program at this institution? **Yes**
Dept: **Psychotherapy**
Suite/Building #: **[Redacted]**
State: **[Redacted]**
Province: **[Redacted]**
Phone: **[Redacted]**
Start Date: **07/1996**
Program Director Name:
Did you complete the training program at this institution: **Yes**
Do you have Fellowship training? **No**

**Specialty Information**

Primary Specialty:
**Marriage & Family Therapist**
Primary Specialty Initial Certification Date:
**01/12/1999**
Expiration Date (if applicable): **01/12/2012**

Do you wish to be listed in the directory under this primary specialty:
By PPO: **Yes**
Name of Certifying Board: **Other, Not Listed**
Do you have a Secondary Specialty: **No**
Do you have any Additional Specialties?
**No**

Board Certified? **Yes**
Last Recertification Date (if applicable):
**01/12/2010**

Do you wish to be listed in the directory under this primary specialty? By HMO:
**Yes**
Do you wish to be listed in the directory under this primary specialty? By POS:
**Yes**
Reason not taking boards:

**Certification Information**

| | |
|---|---|
| Basic Life Support (BLS): **No** | BLS Expiration Date: |
| Advanced Cardiac Life Support (ACLS): **No** | ACLS Expiration Date: |
| Advanced Life Support in OB (ALSO): **No** | ALSO Expiration Date: |
| Pediatric Advanced Life Support (PALS): **No** | PALS Expiration Date: |
| Advanced Trauma Life Support (ATLS): **No** | ATLS Expiration Date: |
| Neonatal Advanced Life Support (NALS): **No** | NALS Expiration Date: |
| CPR – Cardio-Pulmonary Resuscitation: **No** | CPR Expiration Date: |

**Credentialing Information**

Credentialing Contact:
Last Name: **Baldini**
Middle Initial: **D**
Address 2:
State: **[Redacted]**
Phone: **[Redacted]**
Email: **[Redacted]**

First Name: **Vanessa**
Address: **[Redacted]**
City: **[Redacted]**
Zip Code: **[Redacted]**
Fax:

**Practice Locations**

Physician Group/Practice Name to appear in directory: **Baldini**
Suite, Department, etc. **[Redacted]**
State: **[Redacted]**
ZIP+4: **[Redacted]**
Office Fax Number:
Please indicate if this is your primary office location: **Primary Practice**
What type of practice? **Solo**
Tax ID: **61-5014611**
Group Name:

Office Street Address: **[Redacted]**
City: **[Redacted]**
ZIP Code: **[Redacted]**
Office Phone Number: **[Redacted]**
Office E-mail Address: **[Redacted]**
Can general correspondence be sent to this location? **Yes**

Type of Tax ID: **Individual**
Is this the Primary Tax ID for this practice location? **Yes**
Enter previous or future start date.

Currently practicing at this address? **Yes**
After Hours, back office phone number for health plan business use only:
New Patients? **Yes**
All new patients? **Yes**
New payor existing patients? **Yes**
New patients w/referral? **Yes**
New Medicare patients? **No**
New Medicaid patients? **No**
Does this information vary by health plan? **No**

If yes, please provide explanation below:

Monday Office Hours:
Tuesday Office Hours:
Wednesday Office Hours:
Thursday Office Hours:
Friday Office Hours:
Saturday Office Hours:
Sunday Office Hours:

Do you have any Partners/Associates at this location? **No**
Partner:
24x7 Phone Coverage at this location? **No**
Phone Coverage type:
**Voice Mail Other**
Office Manager:
Last Name: **Baldini**
Middle Initial: **D**
Fax Number:
Billing Contact:
Last Name: **Baldini**
Middle Initial: **D**
Suite, Department, etc.
**[Redacted]**
State: **[Redacted]**
Phone Number:
**[Redacted]**
E-mail Address:
**[Redacted]**
Payment Contact:
Are there any Practice Limitations? **No**
Age Limitations? **No**
Meet ADA req? **No**
Does this office provide handicapped accessibility?
**No**
Building: **No**
Parking: **No**
Restroom? **No**

First Name: **Vanessa**
Phone Number:
**[Redacted]**
E-mail Address:
**[Redacted]**
First Name: **Vanessa**
Street Address:
**[Redacted]**
City: **[Redacted]**
ZIP Code: **[Redacted]**
Fax Number

Minimum Age Limitations:
Other Limitation Description:

Is this office accessible by public transportation? **No**
Bus: **No**
Subway: **No**
Regional Train: **No**
Other Transportation: Other Transportation Access: **car**
Does this office have other services for the disabled? **No**
Text Telephony – TTY: **No**
American Sign Language – ASL: **No**
Mental/Physical Impairment Services: **No**
Other Disability Services: Other Disability Services: **none**
Do you have any mid-level practitioners at this location? **No**
Non-English languages spoken by office personnel: **Spanish** Interpreters Available? **No**
Lab Services? **No** Accrediting/Certifying Program (e.g. CLIA, COLA, MLE, AAFP, CAP, etc):
X-Ray Certification Type:

Radiology Services? **No**
EKG Services? **No**
Care of Minor
Lacerations? **No**
Pulmonary Function
testing? **No**
Allergy injections? **No**
Allergy Skin testing? **No**
Office Gynecology? **No**
Drawing Blood? **No**
Age Appropriate
immunizations? **No**
Flexible Sigmoidoscopy?
**No**
Tympanometry/
Audiometry Screening?**No**
Asthma treatment? **No**
Osteopathic
Manipulation? **No**
IV hydration
Treatment? **No**
Cardiac Stress Test? **No**
Physical Therapy? **No**
Additional Office
Procedures (including
surgical)? **None**
Is anesthesia admin-
istered in your office? **No**
Anesthesia Administered
by Last Name:

What class/category of
anesthesia is used?
**none**
Anesthesia Admin-
istered by First Name:

---

## Hospital Information

Do you have hospital privileges? **No**

Admitting Arrangements: **none**

## Insurance Information

Self-Insured? **Yes**

Address: **[Redacted]**
City: **[Redacted]**
Postal Code: **[Redacted]**
Policy Number: **PHCPE36449**
Current Effective Date: **07/2011**
Individual Coverage: **Yes**
Do you have unlimited coverage with this insurance carrier? **No**
Amount of coverage aggregate? **$3,000,000.00**
Country: **United States**

Carrier/Self Insured Name: **Allied Professionals Insurance Company**

Suite/Building #: **[Redacted]**
State: **[Redacted]**
Phone Number:
Original Effective Date: **07/2008**
Current Expiration Date: **07/2012**
Tail Coverage: **No**
Amount of coverage per occurrence: **$1,000,000.00**

Province:

**Work History Information**

Practice/Employer Name: **Self Employed**
Suite/Building #:
State: **[Redacted]**
Start Date: **09/2007**
Province:
Phone: **[Redacted]**
Reason for departure:

Address: **[Redacted]**
City: **[Redacted]**
Postal Code: **[Redacted]**
End Date:
Country: **United States**

Practice/Employer Name: **Didi Hirsch Community Mental Health Center**
Suite/Building #: **[Redacted]**
State: **[Redacted]**
Start Date: **10/1997**
Province:
Phone: **[Redacted]**
Reason for departure: **[Redacted]**

Address: **[Redacted]**
City: **[Redacted]**
Postal Code: **[Redacted]**
End Date: **10/2007**
Country: **[Redacted]**
Fax:

Do you have any work history gaps greater than 3 months? **No**

Are you currently on active military duty or on military reserve? **No**

**References Information**

First Name: **[Redacted]**
Address: **[Redacted]**
City: **[Redacted]**
Postal Code: **[Redacted]**
Province: **[Redacted]**
Phone: **[Redacted]**

Last Name: **[Redacted]**
Suite/Building # **[Redacted]**
State: **[Redacted]**
Provider Type: **Marriage/Family Therapist**
Country: **[Redacted]**
Fax: **[Redacted]**

First Name: **[Redacted]**
Address: **[Redacted]**
City: **[Redacted]**
Postal Code: **[Redacted]**
Province: **[Redacted]**
Phone: **[Redacted]**

Last Name: **[Redacted]**
Suite/Building #: **[Redacted]**
State: **[Redacted]**
Provider Type: **Clinical Social Worker**
Country: **United States**
Fax:

First Name: **[Redacted]**
Address: **[Redacted]**
City: **[Redacted]**
Postal Code: **[Redacted]**
Province: **[Redacted]**
Phone: **[Redacted]**

Last Name: **[Redacted]**
Suite/Building #: **[Redacted]**
State: **[Redacted]**
Provider Type: **Clinical Social Worker**
Country: **United States**

**Disclosure information**

18. Has your license, registration or certification to practice in your profession ever been voluntarily or involuntarily relinquished, denied, suspended, revoked, restricted, or have you ever been subject to a fine, reprimand, consent order, probation or any conditions or limitations by any state or professional licensing, registration or certification board? **No**

If Yes, please provide an explanation below.

19. Has there been any challenge to your licensure, registration or certification? **No**

If Yes, please provide an explanation below.

20. Have your clinical privileges or medical staff membership at any hospital or healthcare institution, voluntarily or involuntarily, ever been denied, suspended, revoked, restricted, denied renewal or subject to probationary or to other disciplinary conditions (for reasons other than non-completion of medical record when quality of care was not adversely affected) or have proceedings toward any of those ends been instituted or recommended by any hospital or healthcare institution, medical staff or committee, or governing board? **No**

If Yes, please provide an explanation below.

21. Have you voluntarily or involuntarily surrendered, limited your privileges or not reapplied for privileges while under investigation? **No**

If Yes, please provide an explanation below.

22. Have you ever been terminated for cause or not renewed for cause from participation, or been subject to any disciplinary action, by any managed care

organizations (including HMOs, PPOs, or provider organizations such as IPAs, PHOs)? **No**

If Yes, please provide an explanation below.

23. Were you ever placed on probation, disciplined, formally reprimanded, suspended or asked to resign during internship, residency, fellowship, preceptorship or other clinical education program? If you are currently in a training program, have you been placed on probation, disciplined, formally reprimanded, suspended or asked to resign? **No**

If Yes, please provide an explanation below.

24. Have you ever, while under investigation or to avoid an investigation, voluntarily withdrawn or prematurely terminated your status as a student or employee in any internship, residency, fellowship, preceptorship, or other clinical education program? **No**

If Yes, please provide an explanation below.

25. Have any of your board certifications or eligibility ever been revoked? **No**

If Yes, please provide an explanation below.

26. Have you ever chosen not to re-certify or voluntarily surrendered your board certification(s) while under investigation? **No**

If Yes, please provide an explanation below.

27. Have your Federal DEA and/or State Controlled Dangerous Substances (CDS) certificate(s) or authorization(s) ever been challenged, denied, suspended, revoked, restricted, denied renewal, or voluntarily or involuntarily relinquished? **No**

If Yes, please provide an explanation below,

28. Have you ever been disciplined, excluded from, debarred, suspended, reprimanded, sanctioned, censured, disqualified or otherwise restricted in regard to participation in the Medicare or Medicaid program, or in regard to other federal or state governmental health care plans or programs? **No**

If Yes, please provide an explanation below.

29. Are you currently the subject of an investigation by any hospital, licensing authority, DEA or CDS authorizing entities, education or training program, Medicare or Medicaid program, or any other private, federal or state health program or a defendant in any civil action that is reasonably related to your qualifications, competence, functions, or duties as a medical professional for alleged fraud, an act of violence, child abuse or a sexual offence or sexual misconduct? **No**

If Yes, please provide an explanation below.

30. To your knowledge, has information pertaining to you ever been reported to the National Practitioner Data Bank or Healthcare Integrity end Protection Data Bank? **No**

If Yes, please provide an explanation below.

31. Have you ever received sanctions from or are you currently the subject of investigation by any regulatory agencies (e.g., CL1A, OSHA etc.)? **No**

If Yes, please provide an explanation below.

32. Have you ever been convicted of, pled guilty to, pled nolo contendere to, sanctioned, reprimanded,

restricted, disciplined or resigned in exchange for no investigation or adverse action within the last ten years for sexual harassment or other illegal misconduct? **No**

If Yes, please provide an explanation below.

33. Are you currently being investigated or have you ever been sanctioned, reprimanded, or cautioned by a military hospital, facility, or agency, or voluntarily terminated or resigned while under investigation or in exchange for no investigation by a hospital or healthcare facility of any military agency? **No**

If Yes, please provide an explanation below.

34. Has your professional liability coverage ever been cancelled, restricted, declined or not renewed by the carrier based on your individual liability history? **No**

If Yes, please provide an explanation below.

35. Have you ever been assessed a surcharge, or rated in a high-risk class for your specialty, by your professional liability insurance carrier, based on your individual liability history? **No**

If Yes, please provide an explanation below.

36. Have you ever had any professional liability actions (pending, settled, arbitrated, mediated or litigated) within the past 10 years? **No**

If yes, provide information for each case.

37. Have you ever been convicted of, pled guilty to, or pled nolo contendere to any felony? **No**

If Yes, please provide an explanation below.

38. In the past ten years have you been convicted of, pled guilty to, or pled nolo contendere to any misdemeanor (excluding minor traffic violations) or been found liable or responsible for any civil offense that is reasonably related to your qualifications, competence, functions, or duties as a medical professional, or for fraud, an act of violence, child abuse or a sexual offence or sexual misconduct? **No**

If Yes, please provide an explanation below.

39. Have you ever been court-martialed for actions related to your duties as a medical professional? **No**

If Yes, please provide an explanation below.

40. Are you currently engaged in the illegal use of drugs? ('Currently' means sufficiently recent to justify a reasonable belief that the use of drug may have an ongoing impact on one's ability to practice medicine. It is not limited to the day of, or within a matter of days or weeks before the date of application, rather that it has occurred recently enough to indicate the individual is actively engaged in such conduct. 'Illegal use of drugs' refers to drugs whose possession or distribution is unlawful under the Controlled Substances Act, 21 U.S.C. 812.22. It 'does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the controlled Substances Act or other provision of Federal law.' The term does include, however, the unlawful use of prescription controlled substances.): **No**

If Yes, please provide an explanation below.

41. Do you use any chemical substances that would in any way impair or limit your ability to practice medicine and perform the functions of your job with reasonable skill and safety? No

If Yes, please provide an explanation below.

42. Do you have any reason to believe that you would pose a risk to the safety or well being of your patients? No

If Yes, please provide an explanation below

43. Are you unable to perform the essential functions of a practitioner in your area of practice even with reasonable accommodation? No

## Standard Authorization, Attestation and Release

### (Not for Use for Employment Purposes)

I understand and agree that, as part of the credentialing application process for participation, membership and/or clinical privileges (hereinafter, referred to as 'Participation') at or with each healthcare organization indicated on the 'List of Authorized Organizations' that accompanies this Provider Application (hereinafter, each healthcare organization on the 'List of Authorized Organizations' is individually referred to as the 'Entity'), and any of the Entity's affiliated entities, I am required to provide sufficient and accurate information for a proper evaluation of my current licensure, relevant training and/or experience, clinical compliance, health status, character, ethics, and any other criteria used by the Entity for determining initial and ongoing eligibility for Participation. Each Entity and its representatives, employees and agent(s) acknowledge that the information obtained relating to the application process will be held confidential to the extent permitted by law.

I acknowledge that each Entity has its own criteria for acceptance, and I may be accepted or rejected by each independently, I further acknowledge and understand that my cooperation in obtaining information and my consent to the release of information do not guarantee that any Entity will grant me clinical privileges or contract with me as a provider of services. I understand that my application for Participation with the Entity is not an application

for employment with the Entity and that acceptance of my application by the Entity will not result in my employment by the Entity.

Authorization of Investigation Concerning Application for Participation. I authorize the following individuals including, without limitation, the Entity, its representatives, employees, and/or designated agent(s); the Entity's affiliated entities and their representatives, employees, and/or designated agents; and the Entity's designated professional credentials verification organization (collectively referred to as 'Agents') to investigate information, which includes both oral and written statements, records, and documents, concerning my application for Participation, I agree to allow the Entity and/or its Agent(s) to inspect and copy all records and documents relating to such an investigation.

Authorization of Third-Party Sources to Release Information Concerning Application for Participation. I authorize any third party, including, but not limited to, individuals, agencies, medical groups responsible for credentials verification, corporations, companies, employers, former employers, hospitals, health plans, health maintenance organizations, managed care organizations, law enforcement or licensing agencies, insurance companies, educational and other institutions, military services, medical credentialing and accreditation agencies, professional medical societies, the Federation of State Medical Boards, the National Practitioner Data Bank, and the Health Care Integrity and Protection Data Bank, to release

to the Entity and/or its Agent(s), information, including otherwise privileged or confidential information, concerning my professional qualifications, credentials, clinical competence, quality assurance and utilization data, character, mental condition, physical condition, alcohol or chemical dependency diagnosis and treatment, ethics, behavior, or any other matter reasonably having a bearing on my qualifications for Participation in, or with the Entity. I authorize my current and past professional liability carrier(s) to release my history of claims that have been made and/or are currently pending against me. I specifically waive written notice from any entities and individuals who provide information based upon this Authorization, Attestation and Release.

Authorization of Release and Exchange of Disciplinary Information. I hereby further authorize any third party at which I currently have Participation or had Participation and/or each third party's agents to release 'Disciplinary Information,' as defined below, to the Entity and/or its Agent(s). I hereby further authorize the Agent(s) to release Disciplinary Information about any disciplinary action taken against me to its participating Entities at which I have Participation, and as may be otherwise required by law. As used herein, 'Disciplinary Information' means information concerning (i) any action taken by such health care organization, their administrators, or their medical or other committees to revoke, deny, suspend, restrict, or condition my Participation or impose a corrective action plan (ii) any other disciplinary action involving me, including, but not limited to, discipline in the

employment context; or (iii) my resignation prior to the conclusion of any disciplinary proceedings or prior to the commencement of formal charges, but after I have knowledge that such formal charges were being (or are being) contemplated and/or were (or are) in preparation.

Release from Liability. I release from liability and hold harmless any Entity, its Agent(s), and any other third party for their acts performed in good faith and without malice unless such acts are due to the gross negligence or willful misconduct of the Entity, its Agent(s), or other third party in connection with the gathering, release and exchange of, and reliance upon, information used in accordance with this Authorization, Attestation and Release. I further agree not to sue any Entity, any Agent(s), or any other third party for their acts, defamation or any other claims based on statements made in good faith and without malice or misconduct of such Entity, Agent(s) or third party in connection with the credentialing process. This release shall be in addition to, and in no way shall limit, any other applicable immunities provided by law for peer review and credentialing activities. In this Authorization, Attestation and Release, all references to the Entity, its Agent(s), and/or other third party include their respective employees, directors, officers, advisors, counsel, and agents. The Entity or any of its affiliates or agents retains the right to allow access to the application information for purposes of a credentialing audit to customers and/or their auditors to the extent required in connection with an audit of the credentialing processes and provided that the customer and/or their auditor executes an appropriate confidentiality

agreement. I understand and agree that this Authorization, Attestation and Release is irrevocable for any period during which I am an applicant for Participation at an Entity, a member of an Entity's medical or health care staff, or a participating provider of an Entity. I agree to execute another form of consent if law or regulation limits the application of this irrevocable authorization. I understand that my failure to promptly provide another consent may be grounds for termination of Participation at or with the Entity. I agree that information obtained in accordance with the provisions of this Authorization, Attestation and Release is not and will not be a violation of my privacy.

I certify that all information provided by me in my application is current, true, correct, accurate and complete to the best of my knowledge and belief, and is furnished in good faith. I will notify the Entity and/or its Agent(s) within 10 days of any material changes to the information (including any changes/challenges to license, DEA, insurance, malpractice claims, NPDB/HIPDB reports, discipline, criminal convictions, etc.) I have provided in my application or authorized to be released pursuant to the credentialing process. I understand that corrections to the application are permitted at any time prior to a determination of Participation by the Entity, and must be submitted online or in writing, and must be dated and signed by me (may be a written or an electronic signature). I acknowledge that the Entity will not process an application until they deem it to be a complete application and that I am responsible to provide a complete application and to produce adequate and timely information for

resolving questions that arise in the application process. I understand and agree that any material misstatement or omission in the application may constitute grounds for withdrawal of the application from consideration; denial or revocation of Participation; and/or immediate suspension or termination of Participation. This action may be disclosed to the Entity and/or its Agent(s). I further acknowledge that I have read and understand the foregoing Authorization, Attestation and Release and that I have access to the bylaws of applicable medical staff organizations and agree to abide by these bylaws, rules and regulations. I understand and agree that a facsimile or photocopy of this Authorization, Attestation and Release shall be as effective as the original.

_____ _____

Signature Name (print)

Date signed:
[10/24/11]

Pages 1 - 29

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Susan Illston

THOMAS ZABOROWSKI, VANESSA BALDINI, KIM DALE, NANCY PADDOCK, MARIA HOWARD, AND TIM PLATT, on behalf of themselves and all others similarly situated.

Plaintiffs,

VS.

MHN GOVERNMENT SERVICES, INC. and MANAGED HEALTH NETWORK, INC.,
Defendants

NO. C 12-5109 SI

San Francisco, California
Friday, March 15, 2013
10:03 A.M.

**TRANSCRIPT OF PROCEEDINGS**

**Appearances:**

For Plaintiffs

BARON AND BUDD, P.C.
3102 Oak Lawn Avenue
Suite 1100
Dallas, Texas 75219

**By: Allen R. Vaught, Esquire**

LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP
275 Battery Street
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San Francisco, California 94111

**By: Kelly M. Dermody, Esquire**
**Jahan C. Sagafi, Esquire**

(Further appearances on following page)

**Reported by: Joan Marie Columbini, CSR 5435, RPR; Official Court Reporter, U.S. District Court**

**Appearances (continued):**

For Defendants

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Suite 3000
Sacramento, California 95814

**By: Timothy J. Long, Esquire**
**Lauri A. Damrell, Esquire**

**Proceedings; Friday, March 15, 2013, 10:03 A.M.**

**The Clerk**: Civil 12-5109, Zaborowski versus MHN.

I'm sorry; I didn't see that.

Please state your appearances.

**Mr. Long:** Tim Long for the Defendant MHN Government Services, et al.

**The Court:** Good morning.

**Ms. Damrell:** Good morning, your Honor. Lauri Damrell, also for MHN.

**The Court:** Good morning.

**Mr. Vaught:** Good Morning, your Honor. Allen Vaught for the Plaintiffs.

**The Court:** Good morning.

**Mr. Sagafi:** Good morning, your Honor. Jahan Sagafi from Lieff, Cabraser, Heiman & Bernstein for the Plaintiffs. With me I have my partner Kelly Dermody.

**Ms. Dermody**: Good morning, your Honor.

**The Court:** Good Morning. This is defendant's Motion to Compel arbitration, which is coming on for hearing at long last. I am curious. I noted in somebody's papers that oral argument in the *Brown* case is this week. Has it happened?

**Mr. Long:** Yes, your Honor.

**The Court:** When?

**Mr. Long**: On Tuesday, your Honor. I argued it.

**The Court:** Okay. How did it go?

**Mr. Long**: I think it went very well.

**The Court:** Well, do we have any idea when they might rule?

**Mr. Long:** In another arbitration case, albeit with facts much more onerous to that defendant, the Court issued -- much more onerous, your Honor.

**The Court:** Yeah.

**Mr. Long:** If memory serves me, the Court heard the motion in January, issued a ruling in February. Beyond that, it would be speculation.

**The Court:** All right. Well, I have pretty much decided that I'm going to decide this motion. It's been brought. It's been briefed and rebriefed and supplementally briefed, so I can't really justify not deciding it at this point.

I had originally thought if we got a prompt reading from the state court in Washington, it would be informative, but at this point I think I better go ahead and decide the motion. So, you can argue it. You can present it on that basis. I have read what's

been presented, and, in my view, the motion should be denied.

I think that the agreements that I've reviewed are both procedural and substantively unconscionable in many different respects, so that's where I'm starting.

You may want to go first, Mr. Long.

**Mr. Long:** Thank you, your Honor. Context is important here, context both with regard to the background of law, *Concepcion* and the other cases issued by the U.S. Supreme Court, as well as other Courts interpreting procedural unconscionability arguments as well as substantive unconscionability arguments.

Context is also important in understanding the agreement and how it's used. This is a situation where MHN contracts with highly skilled, highly trained, sophisticated behavioral healthcare professionals who are also highly compensated. This isn't a situation, for example, like some labor case where you had an employer who imposed upon Spanish-speaking individuals contracts that were 11 pages long on pain of being terminated with no opportunity to review and, in a situation there, where the individuals had asked for the agreement to be in Spanish and were refused.

This is straightforward agreement, nothing uncommon, particularly in the healthcare industry. They were given all the time in the world. There's nothing in the Record --

**The Court:** Let's say they wanted to strike the arbitration provision, could they have done that?

**Mr. Long**: Perhaps.

**The Court:** What good does the time do them?

**Mr. Long:** Pardon me?

**The Court:** What good does the time do them if they didn't have the option to change any of the terms?

**Mr. Long:** Well, I think the time, in the first instance, gives them the opportunity to evaluate whether they want to take on the short-term assignments to supplement their own practices. That's the first thing.

Second, there's no evidence in the record that the plaintiffs have submitted that they would have been prevented from negotiating any terms or what have you.

And the burden here is not on the Defendant to prove procedural unconscionability or substantive unconscionability. So they have failed to –

**The Court:** Conscionability you mean?

**Mr. Long**: Unconscionability.

**The Court:** You don't have to prove unconscionability. Of course, you don't want it to be -

**Mr. Long:** I understand what you're saying, and you're correct.

But, in this instance, there's no such evidence. And I would say, your Honor, there is not only policy that MHN has with regard to considering changes, there's actually a history of changes that have occurred when people have raised issues. It's not specific to the arbitration agreement, but it's specific to other agreements that it has with providers. And if the Court is interested in that type of evidence, I would be happy to submit a supplemental declaration pointing out not only the policy, but the instances where MHN has changed and negotiated provisions.

As I said, that's the plaintiff's burden. It is not our burden, and they haven't carried that burden. There is no surprise to the agreement. This is put in front of them. They considered it. They evaluated it. They accepted it. There is no procedural unconscionability on these facts and this record. And if there's no procedural unconscionability, put everything else aside, period, end of story.

But even if the court were to find some level of unconscionability on the procedural side, I think on this record it's very small. So that raises the burden with regard to substantive unconscionability.

I am not going to go through every single one of our arguments, but what we provided to the court is either a case or a point of law for each of the points they have raised, the growing number of points that they've raised, of what is purportedly substantive

unconscionability, and we've provided you with authority to say, no, it's not.

And this is important, because one of the teaching points from *Concepcion* to all the courts is: rather than look for ways not to enforce arbitration agreements, because consistent with the underlying principle of the FAA, that principle is to enforce the parties' expectations when they agree upon a streamlined proceeding to resolve their disputes.

And how important is that in this instance? These are short-term assignments in which these healthcare professionals are going out and rendering counseling services to members of the military and their family.

There needs to be -- and it is appropriate to have a mechanism that allows for disputes that might arise to be resolved in an informal, fast, efficient method. That's again where context matters.

Another really important part of context is the application of the American Arbitration rules. So they've taken issue, for example, with the selection of the arbitrator's provision. The arbitration agreement makes it very clear that selection of the arbitrator will be pursuant to the rules of the AAA. Likewise, that the arbitrator has to be neutral.

And when you read those provisions in the context of the rules if the American Arbitration Association, which has, for example, the due process protocol -- I think it's number six -- the notion that

leaves to AAA the ability to sua sponte, or upon a motion of any party, to disqualify an arbitrator, makes it very clear in this instance that where an arbitrator's selected to resolve a dispute, that arbitrator selected by, in this case, one of the plaintiffs, that allows for a neutral, fair resolution of disputes.

And that's one other point, your Honor. No one's disputing the fairness of the AAA rules or the process. That hasn't been called into issue at all. And that's important because, again, the parties agreed on a process that would allow for dispute resolution.

And my final point is this: The dispute resolution process at issue comes into play in a variety of contexts.

So, for example, one issue they've taken us on is with regard to the limitation on punitive damages. Well, that works in a mutually beneficial way for both, because, for example, if one of the providers misrepresented his or her credentials and wasn't capable of counseling people who had gone to war, and then compounded things by failing to give a warning when they're otherwise required to do so, and that led to tort liability to MHN, MHN's ability to recover punitive damages from the provider, obviously, is limited.

And I give that as an example to the Court that for each and every one of these provisions, they're mutually beneficial. That was the final point on substantive unconscionability.

The final, final point is severability.

The purpose of this contract, the arbitration agreement, was to allow the parties to resolve their differences in an expedited fashion. That's not an unlawful purpose. In fact, there really hasn't been any allegation that that person is unlawful, and that's important because if one looks at California authorities, the one case, *MKB Management Company*, talked about unless there's an unlawful purpose for this, courts can and should sever provisions that trouble the court to allow the arbitration, in this instance, to go forward. And that's consistent not only with California law, which clearly applies here, but also the purposes enunciated by the Supreme Court and the purposes under the FAA, to allow and find a way for arbitration proceedings to go forward to uphold the expectations of the parties.

So, unless the court has any other questions...

**The Court:** Thank you.

**Mr. Long:** Thank you, your Honor.

**Mr. Sagafi:** Good morning, your Honor. I will be happy to answer any questions, but I would like to just address a few of the comments from my colleague, Mr. Long.

We certainly agree the FAA governs and *Concepcion* governs, but *Concepcion* preserves state court unconscionability analysis. This is an issue of California contract law interpretation. And while

there is a liberal policy in favor of arbitration where it's appropriate, there is also, under California contract law, the requirement that the contract be construed against the drafter under Civil Code 1654.

And here I would differ with Mr. Long's characterization of the relationship. We have workers who are in allegedly an independent contractor relationship and were asserting that they are actually treated as employees. But these are not highly sophisticated workers like some of the workers in the cases that were cited by MHN.

For example, they have a case in which an executive is suing for $5 Million worth of stock against his employer. That's a relationship where there may be parity or the worker may be on superior footing. But we have declaration evidence from both of the two lead plaintiffs, Mr. Zaborowski and Ms. Baldini, that testify to the fact that they were given these form adhesive contracts on a take-it-or-leave-it basis. They were not given the opportunity to negotiate.

Mr. Long has said perhaps they could have negotiated the agreements. We have no evidence and no reason to believe that in a form agreement like this it could have been negotiated.

Although they are assigned by MHN to short-term assignments, they are employed where they have this work relationship for very long periods of time. So MHN will move them from Kansas, to Texas, to California, to Alaska in stints, but they will be

consecutively employed for long periods of time. They are dependent on MHN for that employment.

**The Court:** He said that these were short-term assignments to augment their income from their other pursuits; is that correct?

**Mr. Sagafi:** That's not the reality as experienced by the people we have talked to, and we already have, I believe, 14 people that have opted into the class. We have six named plaintiffs and eight opt-in parties.

They will be assigned by MHN to work at a base for several months, a couple of months, a month and a half, but then they will be moved to other locations. So, several of the plaintiffs have been employed consecutively for three and a half years, that length of time. They are effectively not able to participate in any other employment.

There's a little bit of ambiguity as to whether they are absolutely prohibited from engaging in any other employment, but MHN imposes significant restrictions on their ability to market, and, as a practical matter, because they are working 40, 50, 60 hours a week on a military base, away from home, away from their family, not allowed to see their family, not allowed to see their friends, they are working exclusively for MHN in practice at the very least.

**The Court:** I thought you had said in your papers that they were precluded in some way from doing other work?

**Mr. Sagafi:** They are precluded from marketing their services. And because they are also -- because they are generally licensed in -- they are licensed in one particular state. So, for example, I believe it's Mr. Zaborowski is licensed in Minnesota. He applied to work when he was living in Nevada, and he was able to work for MHN outside of Minnesota because MHN doesn't require him to be licensed in any particular state; it just requires him to be licensed.

Does that answer your question?

**The Court:** No.

**Mr. Sagafi:** Whether they are precluded from other employment?

**The Court:** Right. Perhaps I'm remembering wrong, but I thought I read that in here somewhere. I want to make sure if I did that it's correct.

**Mr. Sagafi:** Yes, your honor. In Mr. Zaborowski's affidavit, which is docket number 29-1, I believe, he quotes the provider manual, the MHN provider manual, which prohibits, on page 37 in paragraph 6.20, 'offering or marketing any personal business services or self-promotion.' so, that, effectively, prevents them from that. That coupled with the time that they spend devoted to doing the job

MHN has assigned them prevents them from doing any other work.

**The Court:** Okay. Maybe that's what I'm remembering. All right. It's not that they can't work for somebody else at the same time; it's just they can't market themselves or market their services?

**Mr. Sagafi:** I don't believe we have evidence yet, and, of course, we haven't begun discovery, but - so, this is only the handful of documents we've gotten from our clients and conversations.

So, I don't believe we have an absolute prohibition on performing one's own work. We do have very strong practical prohibitions on marketing and then the logistics of the fact that you spend all your time doing this.

In reality, we haven't -- in any of these conversations, we have no evidence of anyone ever doing any other work for anyone else.

Then, of course, because they're working, they are assigned by MHN to work on a particular base in a state that 49 out of 50 times is not going to be the one they're licensed in, they are not going to be able to do that work.

I would just take issue with one other item that Mr. Long said about the substantive unconscionability arguments. He said that MHN's briefing has a case on every issue. I don't want to belabor this, because it's so incredibly

unconscionable, the extensive examples that we cited, but there are several items on which MHN provided no authority. On the filing fees and the costs, there's no authority by MHN. On the punitive damages, they cited that one *Monex* Case, which we distinguished. On the statute of limitations, there's extensive authority, including *Pokorny* and *Davis* from the Ninth Circuit, that rejects that position that you can divide—that you practically decimate the statute of limitations from four years down to six months. And I won't waste the Court's time on that.

The pool of arbitrators -- also Mr. Long mentioned the arbitrator is selected by the plaintiff. We explained in our briefing that that is not a real choice. When MHN has the ability to chose [sic] three arbitrators from anywhere in the world -- it doesn't have to be AAA. They are hoping we can read into the arbitration agreement that it has to come from AAA, but nothing in that paragraph says the arbitrators have to come from AAA. It just stays arbitration will be conducted according to AAA rules.

AAA's rules in many respects defer to the decision or the agreement of the parties. Their employment rules explicitly say they will defer to a selection, and that includes the selection of the arbitrator. So, if the arbitrator, even in AAA -- if an arbitrator, applying AAA rules, is from outside of AAA, they still are allowed to proceed under that agreement.

So, MHN can pick its three favorite arbitrators, and then hand them over to the plaintiff to choose

which of the three least evils it chooses, but that's not a real choice, and that was rejected in other courts.

He did say that nobody disputes the fairness of the AAA rules, and we certainly agree with that. The AAA rules are not at issue here. But before you get to the AAA rules, that's where you find the unconscionability.

And the last comment that he made is that if the purpose is merely for expedited resolution, then it's not for an unlawful purpose, then it should be upheld. And, as a general principle, that, of course, is true. But given substantive unconscionability to reduce statute of limitations to non-mutually, in practice, eliminate punitive damages to impose the fee and cost shifting -- or to undo the fee and cost shifting rules of California law and federal law, that is an unlawful purpose that has been recognized by many courts.

And so, his last point was on severability, and we cited several cases empowering the court to find the entire clause unenforceable, and none of those cases have as many problems as this arbitration agreement does.

So, *Armendariz* had two substantive unconscionability elements, limitations on punitive damages and non-mutuality, and it said that if it were to just sever, that would encourage parties to overreach. Of course, that's what MHN has done. And having gotten its hand caught in the cookie jar, it should not be allowed to just rewrite the agreement.

In *Davis* there were four elements. In *Ingle*, there were seven elements. In *Wherry*, w-h-e-r-r-y, there were three substantive unconscionable elements, and it was found to be rife with unconscionability. So if you have three unconscionable elements and it's rife with unconscionability -- this one has eight, as well as the procedural elements, and that is not a candidate where the court should assume the role of contract author or drafter. It's merely interpreting the contract. And in the words of the Ninth Circuit in *Armendariz* -- excuse me -- the courts in *Armendariz* and the Ninth Circuit in *Ingle*, the court should not play that role.

**The Court:** Okay. Thank you.

**Mr. Sagafi:** Your honor, if we are done with arbitration, I do have one housekeeping matter.

**The Court:** Before you get to that, I have one question for Mr. Long.

**Mr. Sagafi:** Yes, your honor.

**The Court:** The complaint alleges, and somewhere in these papers it is alluded to, that since these cases began, the counselors have been reclassified from independent contractors to employees; is that correct?

**Mr. Long**: There's a new contract with the government, and pursuant to –

**The Court:** With the government, okay. Between your client and the Government?

**Mr. Long:** Correct.

**The Court:** And it --

**Mr. Long:** This dispute arises under a prior contract that the client had with the Department of Defense. Since that time there's been a new contract changing many aspects of the program, including, you know, the services that are provided, the conditions, et cetera, and pursuant to the new contract there's both a mix of employee counselors and independent contractor counselors.

**The Court**: Does the contract with the United States government instruct your client how it ought to classify these folks?

**Mr. Long:** I suspect that depends on one's perspective. Let me just say to that point that the government has been intimately involved under the Prior contract -- and I'll speak to that because that's what's at issue here -- with regard to how relationships were structured, the conditions of those relationships. The government got the benefit of all of those relationships as well.

So, from our perspective, the Government knew from stem to stern how these relationships were structured and, as I said, received the benefit of that.

**The Court:** Okay. Thank you. Now, you had a housekeeping—

**Mr. Long:** Your honor, if I Could, just a few points? And I'll keep it short. But just to round out, for example, this issue on self-promotion. I have a copy of that full contract.

The limitation on self-promotion is to -- they're prohibited from offering or marketing any personal services or products to military personnel, family members, or their civilian staff, which makes sense. I mean, they are out on a military installation providing services. The Government -- and this is something that's imposed by the Government, as I understand it -- says you can't market yourself to them. That's the only limitation.

Two, with regard to being invited versus being told, MHN invites these folks to do these short stints. It isn't a situation where they're assigned and they can decline. So to be really clear about this, they are not assigned; they are invited on this thing.

With regard to other opportunities to work, the parties have submitted factual declarations from Ms. Baldini -- with regard to Ms. Baldini and Mr. Zaborowski, and they both represented to MHN that they had a private practice and were providing independent consulting services. So, this was in addition to.

Starting with responding to our arguments, there was the point made that contracts are construed against the drafter. I think that conflates two issues.

To the extent that there's any dispute about the interpretation of a term, the U.S. Supreme Court has been clear in saying in that instance, that's the type of situation which a Court should compel that matter to arbitration.

And the *Pacific Care Health* case was a good example of this. This point was picked up by Judge Jones up in Washington in a post-*Concepcion* case, the *Adams* case which we cited, in which there was some ambiguity. And rather than construing it against the drafter, that court said that's an issue for the arbitrator to decide.

But it's contrary -- in the context of when you are talking about contracts and arbitration, again, the Court has said that courts should find ways to interpret this in a way that allows for the parties to preserve what they have agreed upon, an expedited, streamlined process to resolve their disputes.

You know, there was some discussion about some of the provisions. There was mention about a six-month limitation. It's not a limitation, your Honor. We've never interpreted it as such. It's a timing mechanism.

**The Court:** What's the difference between a timing mechanism and a limitation?

**Mr. Long**: First of all, is there anything per se inappropriate with that? And I think it was Judge Chesney in the *Perez* case said no, and that arose in a

wage and hour classification in an exemption case. She actually enforced it.

Two, the difference is this: if you timely file your claim, you can recover whatever -- whatever your claim is. So to use the plaintiff's theory on this, if they have a right to recover up to four years of back wages under California law, as long as the claim is timely filed, then they can recover up to four years.

And, again, it's a mutually beneficial provision that makes sense in this context. If somebody does a stint in Abu Dhabi or Djibouti [sic]- -- there's a place in Africa that they –

**The Court**: Djibouti. That's the one that starts with a 'd,' right?

**Mr. Long**: Yep. That's the one I was thinking of, not Abu Dhabi.

If there's a dispute that arises as a result of that stint there, doesn't it make sense for both parties to say, raise that dispute promptly. It makes sense in this context. Then if you look at the arbitration agreement, what does one need to do?

**The Court:** Come to San Francisco, among other things.

**Mr. Long:** Ultimately, if the parties can't, in the first instance, resolve their disputes informally, there's a built-in meet and confer process.

And in terms of coming to San Francisco, they contact AAA. And it does make sense to have somebody in San Francisco. Why? First of all, California law controls. Why not have a practitioner who understands California law that will apply to any of the disputes here?

Two -- and I know this is a little bit glib. I have never heard anyone accuse San Francisco as being a venue that's been hostile to plaintiffs, and so I think that bodes well. But it also common sensibly makes sense, because that is -- here MHN is headquartered here. So with regard to evidence, there might be people who may be testifying. It makes sense to allow that.

Also, the AAA rules allow a great deal of flexibility. There's no requirement, for example, to have a California practitioner, or even a practitioner, represent the plaintiff. They can bring in counsel from anywhere.

Two, to the extent that one would submit the matter on the papers, or with documents, or do things by telephone or video, the AAA allows for all of that. So, it's very convenient and very user friendly, which brings me to my final point.

Counsel agree the AAA rules are fair, and they bring a context to this. So to the point of -- for example, on the arbitrator's selection process, the AAA rules are unequivocal. They will not countenance any sort of arbitration that is not presided over by a neutral arbitrator.

This arbitration agreement is subject to those rules. So, while one could interpret the selection process in a nefarious way, there's a backstop. The AAA rules, plus the arbitration agreement, which says the arbitrator must be neutral.

As I started --

**The Court:** it does say. just by the by, that the arbitrator shall have no authority to add to, modify, or refuse to enforce any agreements between parties, presumably meaning the contract. So what you're talking about could be construed as importing other terms into the contract which the arbitrator isn't allowed to do.

**Mr. Long:** I understand that argument, which is one of the arguments that the plaintiffs have made, that the arbitrator can't deviate from the contract, would eviscerate the whole notion of an arbitration agreement, and reads out another important part, that the arbitrator has the power to resolve any controversy among the parties, whether in contract, tort, or otherwise. That's what it's there for.

In this instance, you have claims about whether people were properly classified and what have you. The arbitrator is fully empowered to resolve that, and the language in the arbitration agreement, I think, really is a tortured reading to get to the point of the arbitrator couldn't determine, for example, that these people were improperly classified and entitled to overtime.

That is clearly -- the arbitrator can resolve any controversy related to this agreement, and there's a controversy. We are not saying you can't -- I mean, we've never taken the position that the arbitration agreement would prevent the arbitrator from resolving this dispute or any other dispute that comes between the parties. It just provides a process. It provides a process, a fair one, and in the context of this case, it's appropriate.

So...

**The Court:** Thank you.

**Mr. Long:** Thank you, your Honor. You have a housekeeping issue?

**The Court:** Housekeeping?

**Mr. Sagafi:** Sure. We have that kind of relationship. We can stand at the podium together.

I'm sorry. One issue that Mr. Long mentioned. He said the claims arise under the old contract and not the new contract. Obviously, the claims arise under California labor code and the FLSA. They don't arise under a particular contract.

So we may -- we are still trying to learn, and we have been educated by just what Mr. Long said about what's going on with this changing relationship, and so we may need to amend the complaint to include that, and we have been working cooperatively with MHN's counsel do that.

The housekeeping issue is somewhat related, which has to do with the brief that we filed -- the motion that we filed last night, and we do not expect the court –

**The Court:** I haven't actually studied it.

**Mr. Sagafi:** You don't even have a paper copy of it yet.

Your Honor, we don't expect to get to the merits of it, but I wanted to explain, we moved for FSLA certification, which I recognize is very unusual timing.

But because we just learned about this reclassification a few weeks ago, and we just learned about how MHN, while a parallel case in Washington State Court, the one that was just argued in the Supreme Court this week, was on appeal last year, MHN went out and interviewed all, or substantially all, of the Washington class members, which highlighted for us the danger that the class members face.

If this court denies the motion and rules in our favor, we expect MHN to immediately appeal, and this court, we believe, will likely be divested of jurisdiction very quickly, and we will have to wait the two or three years while the Ninth Circuit addresses that appeal. During that time the class members' statutes will be running, absent tolling, and perhaps more importantly, the evidence that they have in documents and their own memories of the hours that they've worked, the duties that they performed, the

control that MHN has exercised over them will deteriorate month after month.

**The Court:** Let's get back to the appeal part.

**Mr. Sagafi:** Yes, your Honor.

**The Court:** Let's say I -- you're saying if I deny motion, deny the motion to dismiss, then what now?

**Mr. Sagafi:** Then, under the FAA, MHN has the right to appeal –

**The Court:** That ruling. And does that divest me of jurisdiction?

**Mr. Sagafi:** It is a little bit unclear. I think there may be some way for you to retain jurisdiction of the case, but, from what I understand, it's very rare.

**The Court:** It's rare you are going to fool around doing a lot of work on a case if it's up there, I grant you that.

**Mr. Sagafi:** Well, you've seen from our supplemental briefing –

**The Court:** What I'm thinking of is this: there are other ways -- like if you either do or don't certify a class, there are all sorts of interlocutory appellate opportunities these days. I did not understand they would divest the court of jurisdiction like a real appeal would. Maybe this does. I don't know.

**Mr. Sagafi:** I don't know if Mr. Long has an opinion on that, and I have been trying to research it along with everything else we have been doing to push this case along. My understanding is in the vast majority of cases the district court is not able to hold on to the case, and it is stayed by the appellate court pending that resolution.

So, on the basis of that danger, I am concerned that in the two-year period, the statutes will run. Especially in light of the reclassification, there may be changes in facts, and people will gradually forget how much work they did, what they did, what duties they performed. They will throw away e-mails. They will throw away evidence.

MHN is in the middle of litigation. MHN is not going to throw away any evidence. MHN is preparing for an eventual resolution on the merits, presumably. But the class members don't have that advantage because they don't know about the pendency of the case.

So we are -- we thought about what the best way to present this to the court was, and so we decided that an FLSA certification motion, which simply results in notice to the class, which doesn't prejudice MHN -- we go into it in our motion -- if the court were to defer ruling on arbitration for a month and a half that it takes for us to resolve FLSA certification, we would certainly appreciate that, because we think that would be fair to the class members, particularly in light of this new evidence we just learned about, that they went out and gathered

evidence in their own favor and acted in what the state court called an improper fashion. Even assuming they were going to act properly in this case, it still prejudices the class members.

An alternate way to approach it is if the court were just to order MHN to produce the class list to us now with names and contact information, we could contact them ourselves at our own cost and warn them to preserve their evidence.

**Mr. Long:** Well, as you might imagine, I have a somewhat different view, and I don't want to take the Court's time to go through all of the issues. I don't have an answer about whether the court would be divested of jurisdiction. That's something we can provide.

**The Court**: I know the stay issue always comes up, but jurisdiction is a different question, and I just don't know the answer to that.

**Mr. Long:** Your honor, to be candid, we would ask for a stay. We think it would be appropriate.

**The Court:** I understand what you would do.

**Mr. Long:** This is all putting the cart before the horse. One thing that's notably absent, you'll see in that arbitration agreement, is any reference to any sort of class or collective treatment.

**The Court:** I figured that too.

**The Court:** You made the argument that, therefore, it can't be done on a class basis anyway; you said that.

**Mr. Long:** So, allowing any sort of conditional certification or notice to putative class members and the like, particularly when you haven't asked them whether they want their private information to be given out, we think would be inappropriate. That's just been filed with the court. We'll deal with it in due course.

**The Court:** That's fine. All right.

**Mr. Sagafi:** Thank you.

**The Court:** The matter is submitted.

Oh, should there be any rulings of interest on the other places where this same case is pending, let me know.

**Mr. Sagafi:** Yes, your Honor, we will immediately do that.

(Proceedings adjourned at 10:41 a.m.)

**Certificate of Reporter**

I, Joan Marie Columbini, official reporter for the United States Court, Northern District of California, hereby certify that the foregoing proceedings in C 12-5109 SI, Zaborowski, et al. v. MHN Government Services, et al., were reported by me, a certified shorthand reporter, and were thereafter transcribed under my direction into typewriting; that the foregoing is a full, complete and true record of said proceedings as bound by me at the time of filing.

The validity of the reporter's certification of said transcript may be void upon disassembly and/or removal from the court file.

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/s/ Joan Marie Columbini, CSR 5435
Rpr Friday, April 26, 2013